SUPREME COURT OF THE UNITED STATES.

No. 338.

THE ST. LOUIS STREET FOUNDRY, &c., GEO. CRONAN, CLAIMANT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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1 To the honorable the judges of the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana:

The libel of information of Rufus Waples, attorney of the United States for the eastern district of Louisiana, who prosecutes for the said United States in this behalf, and being here present in court, in his own proper person, in the name and behalf of the said United States of America, and the informant in interest, against the St. Louis Street Foundry and the ground on which it stands, hereinafter described, and against all persons intervening for their interest therein, in a case of seizure and forfeiture, alleges, propounds, and declares as follows:

I. That James Graham, esq., marshal of the United States for the said district, under written authority given him by the said attorney, in compliance with instructions issued by the Attorney General of the United States to the district attorneys thereof, and by virtue of the act of Congress approved on the sixth day of August, in the year of our Lord one thousand eight hundred and sixty-one, entitled "An act to confiscate property used for insurrectionary purposes," heretofore, that is to say, on the 12th day of November, in the year one thousand eight hundred and sixty-four, seized, as forfeited to the United States, at New Orleans, within said district, and within the jurisdiction of this court, a certain lot of ground, together with all the improvements thereon, rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situate in the rear of this city, in the second district, designated by the No. one, on a plan by J. Pilie, dated 9th of September, 1843, in square No. forty-two; bounded by St. Louis, Toulouse, Claiborne, and Robertson streets, and measuring, in American measure, twenty-five feet six inches front on St. Louis street by one hundred and two feet deep, bounded by lot No. two on one side and on the other side by property now or lately belonging to James Flood; all the machinery, tools, &c., contained in the building on said lot of ground; the said property being known as the St. Louis Street Foundry.

2 II. That by the act of the Congress of the United States approved August 6, 1861, entitled "An act to confiscate property used for insurrectionary purposes," it was provided "that if, during the present or any future insurrection against the government of the United States, after the President of the United States shall have declared by proclamation that the laws of the United States are opposed and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law, any person or persons, his, her, or their agent, attorney, or employé, shall purchase or acquire, sell, or give any property of whatever kind or description, with intent to employ the same or suffer the same to be used or employed in aiding, abetting, or promoting such rebellion or resistance to the laws, or any person or persons engaged therein; or if any person or persons, being the owner or owners of any such property, shall knowingly use or employ or consent to the

use or employment of the same as aforesaid, all such property is hereby declared to be lawful subject of prize and capture wherever found; and it shall be the duty of the President of the United States to cause the same to be seized, confiscated, and condemned."

III. That the President of the United States did, on the 15th of April, 1861, declare by proclamation "that the laws of the United States are opposed and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law;" and that on the 16th of August, 1861, he did reiterate said proclamation, and did declare that "such insurrection" still existed and had not been suppressed.

IV. 1. That the property herein above described was used and employed by the owner or owners thereof in aiding, abetting, or promoting the said insurrection and resistance to the laws, within the meaning of the said act of Congress, after the approval of the said act, and after the public proclamations of the President above mentioned, and after the 16th day of August, 1861; that said property was used in casting shell and shot and other missiles for the use of the so-called confederate government, in the years 1861 and 1862.

2. That the property herein described was used and employed knowingly, by the owner or owners thereof, in aiding and abetting persons engaged in the said insurrection and resistance to the laws, within the meaning of the said act of Congress, after the approval of said act, and after the public proclamations of the President above mentioned, and after the 16th day of August, 1861; that said property was used in casting shell and shot, and making other missiles for the use of army and navy officers in rebellion against the United States as aforesaid, in the years 1861 and 1862.

3. That the said property was purchased, or acquired, or sold, or given, by the owner or owners thereof, or by his, her, or their agent or employé, with intent to use or employ the same for the purpose of aiding, abetting, or promoting the said insurrection and resistance to the laws, after the approval of said act, and after the public proclamations above mentioned, and after the 16th day of August, 1861.

4. That the owner or owners of the said property did knowingly consent to the use or employment of it for the purpose of aiding, or abetting, or promoting said insurrection and resistance to the laws, or of aiding, abetting, or promoting persons engaged therein, after the approval of said act, and after the proclamations above mentioned, and after the 16th day of August, 1861.

5. That the owner or owners of said property, his, her, or their agent or employé, did suffer said property to be used or employed in aiding, abetting, or promoting the insurrection proclaimed by the President as aforesaid, and in aiding, abetting, or promoting a person or persons engaged in said insurrection, after the approval of act above mentioned, and after the proclamation of the President, duly made public on the 16th day of August, 1861; that said property was used in casting shell and shot and other missiles for the use of the so-called confederate government, in the years 1861 and 1862, and that the owner or owners suffered the said use.

V. That by reason of the premises the property herein described became and was forfeited to the United States, and ought to be confiscated and condemned to the use of the said United States and the informant.

3 Wherefore, the said attorney, in the name and behalf of the United States of America, prays that process of monition may issue against the said property and the owner or owners thereof, and against all persons interested or claiming an interest therein, warning them at some early day, to be named therein, to appear and answer this libel information, and that an order of publication may be made in the usual form, and that, all due proceedings being had, this honorable court may be pleased to decree for the condemnation and forfeiture of the said property to the use and ownership of the said United States and of the informant. And he prays for such further relief as the court is competent to give in the premises.

(Signed) RUFUS WAPLES,
United States Attorney for the Eastern District of Louisiana.

Filed 12th November, 1864.

4 United States circuit court for the sixth judicial circuit and eastern district of Louisiana.

UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY, ONE LOT OF ground, &c. } No. 3484.

Whereas certain property described in the libel filed by the district attorney and now of record in this court, together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging or in anywise appertaining, has been seized by the marshal of the United States for the eastern district of Louisiana, by virtue of an act of Congress approved on the sixth day of August, in the year of our Lord one thousand eight hundred and sixty-one, entitled "An act to confiscate property used for insurrectionary purposes;" and whereas the United States attorney for the eastern district of Louisiana did, on the 12th day of November, A. D. 1864, file a libel of information in this court, praying the condemnation of said property and real estate, under the act aforesaid, and that process of monition issue against the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, warning them at some early day to appear and answer said information:

It is therefore, on this 12th of November, in the year of our Lord eighteen hundred and sixty-four, ordered that notice be given to the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, to appear and answer this information on the 28th day of November, 1864, and show cause, if any they have, why said property and real estate should not be condemned and sold according to law; and that notice be given by posting a copy of this order upon the front door of the court-house of the district, and by

publication in the Era newspaper twice a week, previous to said 28th day of November, A. D. 186 ; first publication to be on or before the 14th instant.

New Orleans, Nov. 12, 1864.

(Signed) T. B. VINOT, *D'y Clerk.*

5 The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize and into your possession take the following described property, to wit: a certain lot of ground, with the improvements thereon, rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situate in the rear of this city, in the second district, designated by the No. one on a plan by J. Pilie, dated 9th September, 1843, in square No. 42, bounded by St. Louis, Toulouse, Claiborne, and Robertson streets, and measuring in American measure 25 feet 6 inches front on St. Louis street by 102 feet deep, bounded by property now or lately belonging to James Flood; all the machinery, tools, &c., contained in the building on said lot of ground; the said property being known as the St. Louis Street Foundry, now libelled by the United States for the causes set forth in the libel pending in the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana; that you do cite and admonish the owner or owners, and all and every other person or persons having or pretending to have any right, title, or interest in or to the same, to be and appear before a circuit court of the United States for the district aforesaid to be holden at the city of New Orleans on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said property should not be condemned and sold agreeably to the prayer of the libellant; and how you have executed this warrant, that you make return according to law.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 12th day of November, A. D. 1864, and 89th year of the independence of the United States.

(Signed) F. B. VINOT, *D'y Clerk.*

6 *Marshal's return.*

Received November 12th, 1864, and, in obedience to the within warrant, seized and took into my possession the within-described property, served copies of this warrant, the libel, and order of the judge, on Thos. Bennett, sheriff's deputy, holding said property under seizure, and published monition in the Era, a daily newspaper printed and published in New Orleans on 13, 14, 18, 22, 26 November, 1864.

(Signed) M. EGAN, *D'y U. S. Marshal.*

Returned 28th November, 1864.

7 *U. S. marshal's monition.*

In the United States circuit court for the sixth judicial circuit and eastern district of Louisiana, No. 3484.

UNITED STATES
vs.
THE ST. LOUIS FOUNDRY, ONE LOT OF GROUND, &c. } No. 3484.

In obedience to a warrant issued in this court to me directed in the above-entitled suit, I have seized and taken into my possession a certain lot of ground situated in the rear of this city, in the second district, designated by the No. one on a plan by J. Pilie, dated 9th September, 1843, in square No. 42, bounded by St. Louis, Toulouse, Claiborne, and Robertson streets, and measuring, in American measure, 25 feet 6 inches front on St. Louis street by 102 feet deep, bounded by the lot No. 2 on one side, and on the other side by property now or late belonging to James Flood, and all the machinery, tools, &c., contained in the building on said lot of ground—the said property being known as the St. Louis Street Foundry, a more particular inventory of which is on file in my office for reference—

8 together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging or in anywise appertaining, now libelled by the United States for the reasons set forth in the libel in the above-entitled suit now pending in said circuit court; and I do hereby cite and admonish the owner or owners thereof, and all persons having or pretending to have any right, title, or interest in or to the same, to be and appear at a circuit court of the United States for the district aforesaid to be holden at the city of New Orleans on or before the third Monday from the date hereof, to show cause, if any they have or can, why the said property, machinery, tools, &c., should not be condemned and forfeited to the United States agreeably to the prayer of the libel.

United States marshal's office, New Orleans, 12th day of November, 1864.

CUTHBERT BULLITT, *U. S. Marshal.*

Claim of George Cronan.—Filed November 29th, 1864.

9 United States circuit court for the sixth judicial circuit and eastern district of Louisiana.

UNITED STATES
vs.
THE ST. LOUIS FOUNDRY, ONE LOT OF GROUND, &c. } No. 3484.

George Cronan, a loyal citizen of the United States, a citizen of the State of Louisiana, and residing in the city of New Orleans, intervening herein for his own interest in the property libelled and seized in the above-entitled cause, to wit, a certain lot of ground situated in the rear of the city of New Orleans, in the second district, designated by the No. one on a plan by J. Pilie, dated 9th Septem-

ber, 1843, in square No. 42, bounded by St. Louis, Toulouse, Claiborne, and Robertson streets, and measuring, in American measure, 25 feet 6 inches front on St. Louis street by 102 feet deep, bounded by lot No. 2 on one side, and on the other side by property now or lately belonging to James Flood, and all the machinery, tools, &c., contained in the building on said lot of ground—the said property being known as the St. Louis Foundry—together with all the
10 improvements, buildings, rights, privileges, appurtenances, hereditaments to the same belonging, claims that he is interested in said property, in the manner following: That on the 4th June, 1862, claimant and intervenor sold by public act before Charles E. Fortier, notary public, of this city, to Lawrence Duffy, of said city of New Orleans, the said libelled and seized property for the price of six thousand nine hundred and fifty-eight dollars and thirty-seven cents, payable and represented by six promissory notes drawn by said L. Duffy to the order of and indorsed by himself, dated the said sixth June, 1862, one payable sixty days after date for four hundred and fifty-eight $\frac{37}{100}$ dollars, and the five other notes for thirteen hundred dollars each, payable six, twelve, eighteen, twenty-four, and thirty months after date, with seven per cent. per annum interest from date till paid, with recognition in said act of sale of the vendor's privilege, and a special mortgage on said property sold to secure the payment of said price; that the notes payable in sixty days, six, and twelve months have been paid, and three hundred and six dollars have been paid on the note which matured in
11 eighteen months from date, and the balance of said price and interest is still due to claimant, who is the holder of said unpaid notes, and on which said unpaid portion of the price your claimant instituted his executory proceeding for the seizure and sale of said libelled property in the sixth district court of New Orleans, and obtained an order of seizure and sale of said property against said L. Duffy on the 26th September, 1864, and under which order said property was seized by the sheriff of the parish of Orleans, and under process of sale at the time of the seizure by the marshal of this court of said property, and which property was libelled on the information, as claimant has reason to believe and does believe, of said Lawrence Duffy to the district attorney; that claimant was owner of said property in 1860, and up to said sale to Duffy in June, 1862.

Wherefore, in the premises, your claimant and intervenor prays to be allowed to file this his claim, and prays the honorable court to render a decree as to right and justice may appertain.

(Signed) GEORGE CRONAN.

Sworn to and subscribed before me this 29th November, 1864.

(Signed) F. B. VINOT, *D'y Clerk.*

WHITAKER, FELLOWS & MILLS, *Proctors.*

12 *Ex. and demurrer of Geo. Cronan.—Filed November* 29, 1864.

United States circuit court for the sixth judicial circuit and eastern district of Louisiana.

UNITED STATES
vs.
THE ST. LOUIS FOUNDRY, ONE LOT OF GROUND, &c. } No. 3484.

And now before this honorable court comes George Cronan, a loyal citizen of the United States, and a claimant and intervenor herein, as by his sworn claim on file, for the sole purpose of excepting and demurring to the libel of information filed herein by Rufus Waples, United States district attorney, and, excepting and demurring, this appearer shows—

1. That the act entitled "An act to confiscate property used for insurrectiouary purposes," approved 6th August, 1861, is in violation of the Constitution of the United States, and therefore null and void and without effect.

2. That the libel of information filed herein is vague and too
13 general, indefinite, and uncertain, does not set forth any specific crime or offence; is not drawn or framed in manner and form required either by admiralty or common law, or by the practice and rules governing in like cases in the courts of the State of Louisiana or the United States courts; does not inform appearer and claimant of the distinct offence charged, or the time of its commission, or the nature or cause of the accusation, and that the libel of information and the matters therein contained, in manner and form as therein stated, do not present a legal charge or accusation.

3. That articles one, two, three, four, and five of paragraph third of said libel of information are each and every one of them separate and distinct from each other, subject to the objections hereinbefore set forth to the libel as a whole; and such objections are hereby presented separately against the aforesaid articulations.

4. That the said act of Congress approved August 6, 1861, and on which the libel of information herein rests, is specially repugnant to the Constitution of the United States, in this: that, being a penal and primitive statute, it provides for the forfeiture and confiscation of
14 the property of certain persons, without any previous criminal trial and conviction of those persons in due course of law, which is prohibted by said Constitution.

5. That said act of Congress, approved 6th August, 1861, does not provide for or contemplate the confiscation of immovable property, or the property libelled and seized in this cause.

That, by reason of the premises, this appearer is not compelled to make answer to the libel of information, nor to any of the articulations therein contained.

Wherefore this appearer prays that this his exception and demurrer be sustained and said libel of information be dismissed, and said seized property be released with costs and with all general relief.

(Signed) GEORGE CRONAN.
(Signed) WHITAKER, FELLOWS & MILLS, *Proctors.*

UNITED STATES OF AMERICA, *Eastern district of Louisiana, ss., to wit:*

Personally appearing before me, the undersigned United States commissioner for the eastern district of Louisiana aforesaid,
15 George Cronan, as principal, and John Coleman, as surety, do hereby acknowledge themselves jointly and severally to be indebted unto the United States of America in the full sum of two hundred and fifty dollars, lawful money of the United States, to be levied of their goods, chattels, lands and tenements, the use of the said United States of America, and for the payment whereof they jointly and severally bind themselves, their heirs, executors, and administrators, firmly by these presents.

Whereas, in the matter of the United States *vs.* the St. Louis St. Foundry, one lot of ground, &c., No. 3484 of the docket of the circuit court of the United States for the 6th circuit and eastern district of Louisiana, a libel of information has been filed on behalf of the United States of America—

This obligation to be null and void, on condition that the said George Cronan shall abide by the final decree rendered in the cause and pay all such costs, expenses, and damages as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court; otherwise, this obligation to remain in full force and virtue.

(Signed) GEORGE CRONAN. [L. S.]
(Signed) JOHN COLEMAN. [L. S.]

Signed and sealed at the city of New Orleans, this 29 day of Novemb'r, 1864, in presence of—

(Signed) CH'S CLAIBORNE, [SEAL.]
U. S. Commissioner in and for the Eastern District of Louisiana.

[5 ct. stamp, cancelled.]

16 *Testimony for libellants.—Filed Dec.* 30, 1864.

UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY AND ONE lot of ground, &c. } No. 3484.

Testimony taken before Charles Claiborne, United States commissioner, December 30th, 11 o'clock a. m. Present: district attorney, Mr. Mills.

Lawrence Duffy, for libellants, being duly sworn, deposes:

I reside at No. 361 Conte street. I have been a resident of this city for more than thirteen years. I have been the superintendent of the St. Louis Street Foundry. I was the superintendent in 1860, 1861, and until the 4th of June, 1862. Mr. George Cronan, now present, employed me. Munitions of war were made during that time in the foundry; shot, shells, grape and some canister were made; they were made for the Confederate States. A confederate officer, Lieutenant Robinson, would sometimes come to the foundry. He once called for shot and shells; he wanted more of one kind than of another. Mr. George Cronan very frequently would come to the

foundry, and look after the business. He is not a mechanic
17 himself; that is, he does not understand foundry mechanics. I am a mechanic. The plans marked A and B, now in my hands, are plans for rifle shells. I manufactured some of them. I took these plans myself from the confederate navy to the foundry. The shells I speak of were manufactured in March or April, 1862, just before the arrival of the federal fleet. (Plans A and B now filed and offered in evidence.) These plans were in the office of Geo. Cronan part of the time; he had knowledge of their having been obtained from the confederate navy. He had knowledge of my making shot and canister at other times. I manufactured these articles with the consent and under the employment of Mr. George Cronan. I know the document marked C, now shown to me; it is the order from Lieutenant Kennon, of the Confederate States navy, for shot, shell; and on the back of it is a memorandum showing the quantity of each kind. Document D, now shown to me, is an order to discontinue the casting of all missiles other than 32 lbs. and 12 lbs. shot, and 8 and 9 inch shells; this order was addressed to Geo. Cronan. I got these
two orders from Geo. Cronan, and had them most of the time
18 in my possession, for I had to work by the said orders. (C and D now filed and offered in evidence.) Document E, shown to me, is a receipt that was sent back, the shells being too large. Document F is a receipt for shells received in good order. (Documents E and F now filed and offered in evidence.) A large quantity of shells and shot was manufactured in the St. Louis Foundry from the time of the commencement of the rebellion to the time of the arrival of the federal fleet at New Orleans. I do not know of any contract between George Cronan and the confederate authorities for the manufacturing of shell, shot, etc., any other than the orders received from time to time. I understood that Lieutenant Kennon had full powers to have those things done. I know that Mr. Cronan was paid for making these articles; I know that he was paid at one time $1,700 or about that, and at another time $650 or something about that. I do not know if he got any other money from the confederate authorities; he had a bill of $3,400 and some dollars against them. I saw him give his power of attorney to a man to go into the confederacy to collect it some time after the arrival of the federal fleet in New Orleans; I cannot say how long after their arrival; it might
19 have been about a couple of months after.

Cross-examined by Mr. Mills:

When Mr. Cronan sold the foundry to me he stated that he would allow me one hundred dollars a month for my past services. The sale took place from Cronan to myself on the 4th of June, 1862. I bought the foundry of him, and also all the claims due to the foundry. The claim due to the foundry, by the confederate authorities was not mentioned in the sale. I think it was intended to be included in the sale. When I was in the employment of Cronan, making the shot and shells, there was no understanding with regard to a fixed salary per month; he stated to me that he would pay me a reasonable sum for my services. When he made the sale of the foundry to me he then

stated that he would only allow me $100 per month for my past services. I never paid a monthly rent of $50 to Mr. Geo. Cronan for the use of the foundry. I signed a paper for him. I do not know what it is, now. He was unwilling to let his partners know that he had anything to do with the foundry, and he made me sign
20 the said paper, so that I should appear to be the only person interested in the matter. John Oliver, George Cronan, and myself first started the foundry, but afterwards Mr. Cronan bought the foundry from us. Mr. Oliver and myself carried on the business in the beginning of 1860. Mr. Cronan had other affairs to attend to; I carried on the foundry from 1860 to 1862 for Mr. Cronan until the time of sale. At the time that I carried on the foundry after the sale of my interest to Cronan, there was no understanding between us about the dividing of the profits; he told me to go on and carry on the foundry, and that he would see me right after a time; I do not know when; and I think it was his intention that I should have the foundry if I could pay for it. The above is all the interest I had in the foundry in the year 1861; Cronan owed me money, however, for previous services. In 1861 I made a contract with Mr. Philip McGuire, under the instructions of Cronan. The contract was made in my own name; I sued on that contract after my purchase of the foundry from Cronan, supposing it to be included in the sale made by Cronan to me. Canister shot was made under that contract. A small quantity was made. McGuire never paid me anything;
21 a cousin of mine collected money from McGuire, and, I think, paid me a small amount; I do not know if he paid it to me or to Cronan, because Cronan was to receive all the money; he always received the money made and collected. When I had to pay the hands, I got the money from Cronan; he often paid them himself in his office. The books of the foundry, I think, in 1861 were kept in my own name. Mr. Cronan knew of the making of the McGuire contract, as he was present at the signing of it, in the same building, below in the bookstore; I am certain of that fact; I cannot say if Mr. Cronan was aware of my going for the plans marked A and B. I think he was at that time a member of the legislature. The orders were sent under an envelope addressed to Mr. Cronan; I never executed them until Mr. Cronan had seen the plans; I did not go for the plans; I often would go there, and the plans were handed to me by Lieut. Robinson, of the confederate navy. Mr. Cronan has sued me in one of the State courts for the balance of the price of this property; the property has been seized by him. My lawyer ap-
22 plied to the military authorities to have the seizure and sale of this property stopped; I never applied in person; I gave my case to my lawyer, and he applied to the military authorities; I signed the petition, I think. My demand was made on the ground of a military order issued first by General Butler, I think, and then by General Banks. The sale was stopped on condition that I should pay the costs and interest. I took no steps at all afterwards to stop the sale; I never applied to an officer of the United States to have this property libelled; I did not apply to Mr. Waples, the district at-

torney, to have the same libelled; I did not request any one else to apply to Mr. Waples to have it libelled. The plans were the greater part of the time in my possession; sometimes they were in the hands of Mr. Cronan. I cannot say when was the last time I had these plans A and B in my hands prior to my coming here. When I bought the property the plans were handed to me by Mr. Cronan, and remained in my house; they were taken from my house with other papers and handed to my lawyer, when my case was presented before the military commission. My lawyer wished me to give him
23 all the papers connected with the foundry, including those connected with the making of shot and shell; I handed him a bundle containing all the papers; my counsel did not return any of those papers to me; he has some of them yet; I never gave an order on him for any of those papers; I never informed any other person but my counsel that these plans were in my counsel's hands. I think that the military commission were informed that shot and shell had been made in the St. Louis Foundry; I do not think the fact was mentioned in the application signed by me; I do not know why it was not mentioned. The application was drawn up by my lawyer. I think I saw yesterday the diagrams A and B for the first time after handing the same to my counsel; I saw them in the district attorney's office. Before this property was libelled by the United States I was not aware that it was to be libelled; I was not aware that efforts would be made to have it libelled. I never applied to and never attempted to persuade any one to go to New York to obtain testimony in order to have this property condemned.

24 Direct examination resumed:

The inventory taken by the marshal being exhibited to witness, he says: All the articles mentioned in this inventory were used in the foundry at the time and for the purposes above mentioned, with the exception of some lot of iron patterns, and lot of wooden patterns, and 3 large iron flasks, and one small lot of cast iron, and two blocks and rope; all the articles formed part of the tools and of the foundry, and were used as above mentioned.

Cross-examination resumed by Mr. Cronan:

I do not remember and cannot say whether or not any of the shells made in accordance with the two diagrams marked A and B were delivered to the confederate authorities. Men were working at the shells of these patterns when the federal fleet came up, putting brass bushing, &c., I think; those of that pattern, I do not think, were completed; I do not think they were ever delivered; most that were made were 8, 9, 10, and 13 inch shells; a few only of 13, and
25 they were delivered. It was not after the arrival of the federal fleet that I showed the diagrams marked A and B to Mr. Cronan.

(Signed) LAWRENCE DUFFY.

Sworn to and subscribed before me this 30th day of December, 1864.

(Signed) CHARLES CLAIBORNE,
U. S. Commissioner.

L. W. Donnelly, for libellants, duly sworn, deposes and says:

I think I never saw shot and shell made in the St. Louis foundry; I saw shot and shell there in 1862, before the arrival of the fleet; they had the appearance of being new. I saw men at work in the foundry. I sold iron to Mr. Lawrence Duffy; I cannot say for what purpose it was purchased; it was sold by me in the latter part of 1861 and the first portion of 1862. I have seen Mr. Cronan in the foundry; he was there off and on, looking around, talking to Mr. Duffy, to me, and to others; it was when the foundry was first built, and also about the time I was delivering the iron, and when I saw the shot and shell.

26 Cross-examined by Mr. Cronan:

In 1862, 1863, and 1864 I have sold iron to Mr. Duffy for making bridge plates, and for other uses. I have seen Mr. Cronan in the latter part of 1862 and in the year 1863 about the foundry. When Mr. Duffy purchased iron from me in 1861 and 1862, I supposed it was for his own account that he bought it; he always paid me. I made my bills against Mr. Duffy, and he paid them. On one occasion I got part of my money from Mr. Cronan. My business is to buy and sell cast iron.

(Signed) J. W. DONNELLY.

Sworn to and subscribed before me this 30th day of December, 1864.

(Signed) CHARLES CLAIBORNE,
U. S. Commissioner.

27 *Inventory of the St. Louis Foundry.—Offered in evidence and filed December* 30, 1864.

15 iron flasks, 9 wooden do., 4 small iron do., 1 small cube blower, 1 engine and boiler, 1 lot of iron patterns, 1 do. wooden do., 1 do. fuller boards, 3 large iron flasks, 1 crane and fixtures, 1 fan, 1 shaft, 4 pulleys and 3 bolts, 1 lot of small flask boards, 1 small lot of cast-iron, 1 lot of moulding sand, 2 crane needles and 1 hook, 3 shank do., 2 hand do., 1 lot of wooden pillows, 1 do. square, 2 blocks and rope, 2 snap flask boxes, 1 water prough, 1 cover oven, 1 grindstone, 1 shed containing a lot of patterns, iron plate; bridge in front of the foundry.

New Orleans, November 14th, 1864.

(Signed) M. EGAN, *Deputy U. S. Marshal.*

(Here follows plans A and B, page 27.)

30 *Document C.—Filed December 30th*, 1864.

ORDNANCE OFFICE,
New Orleans, Nov'r 4th, 1861.

Mr. George Cronan:

SIR: Please make for the use of the navy one thousand shot, shell, grape, and spherical case shot for guns, from 12-p'dr howitzers to 13-inch mortars. When you come to a calibre above 42-p'ds shot shell is alone required.

Respectfully, &c.,

(Signed) BEVERLY KENNON, *Lt. C. S. N.*

Shot.	Shell.	Spherical c'se.	Grape.	Calibre.
1,000	1,000	1,000	1,000	42-p'dr.
1,000	1,000	1,000	1,000	32-p'dr.
1,000	1,000	1,000	1,000	24-p'dr.
1,000	1,000	1,000	1,000	18-p'dr.
1,000	1,000	1,000	1,000	12-p'dr.

31 Shell alone:

F'r 8-in. guns 1,000 shell; f'r 10-in. guns 1,000 shell; f'r 12-in. guns 1,000 shell; f'r 13-in. guns 1,000 shell.

Ordered by Lieutenant B. Kennon from George Cronan.

Document D.—Filed December 30th, 1864.

ORDNANCE OFFICE,
New Orleans, December 23d, 1861.

SIR: Until further orders you will discontinue casting all kind of missiles other than 32-po'd'rs and 12-p'd'r shot and 8, 9 and 10-inch shell. You will cast two hundred of the 10-inch shell, and then stop the casting of that class also.

Yours, respectfully,

WM. L. BRORFORD,
Lt. C. S. N. and Ord. Officer.

Mr. GEORGE CRONAN, *New Orleans, La.*

32 *Document E.—Filed December 30th, 1864.*

NEW ORLEANS, *April 5th*, 1862.

Received in good order from the C. S. N. laboratory, for account George Cronan, at the foundry, 5 10-in. shell, brass bushes too large; 4 9-in. shell, brass bushes too large; 8 8-in. shell, brass bushes too large.

Document F.—Filed December 30th, 1864

Dray No. —. NEW ORLEANS, *Apr*

Received from Geo. Cronan, in good order, on boar ate laboratory, 16 (sixteen) 9-inch shells; 16 (sixteen) brass bushing.

(Signed) T. D. LYON,
For W. A. ROBBINS.

33 *Hearing and submission of demurrer.—From the minutes of Jan'y 2d, 1865.*

THE UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY, one lot of ground. } No. 3484.

This cause was this day called up for trial on its merits—district attorney for libellants, Whitaker, Fellows, and Mills, esq'r's, for claimants—when the proctors for the claimant called the attention of

L. W. Donnelly, for libellants, duly sworn, deposes and says:

I think I never saw shot and shell made in the St. Louis foundry; I saw shot and shell there in 1862, before the arrival of the fleet; they had the appearance of being new. I saw men at work in the foundry. I sold iron to Mr. Lawrence Duffy; I cannot say for what purpose it was purchased; it was sold by me in the latter part of 1861 and the first portion of 1862. I have seen Mr. Cronan in the foundry; he was there off and on, looking around, talking to Mr. Duffy, to me, and to others; it was when the foundry was first built, and also about the time I was delivering the iron, and when I saw the shot and shell.

26 Cross-examined by Mr. Cronan:

In 1862, 1863, and 1864 I have sold iron to Mr. Duffy for making bridge plates, and for other uses. I have seen Mr. Cronan in the latter part of 1862 and in the year 1863 about the foundry. When Mr. Duffy purchased iron from me in 1861 and 1862, I supposed it was for his own account that he bought it; he always paid me. I made my bills against Mr. Duffy, and he paid them. On one occasion I got part of my money from Mr. Cronan. My business is to buy and sell cast iron.

(Signed) J. W. DONNELLY.

Sworn to and subscribed before me this 30th day of December, 1864.

(Signed) CHARLES CLAIBORNE,
U. S. Commissioner.

27 *Inventory of the St. Louis Foundry.—Offered in evidence and filed December* 30, 1864.

15 iron flasks, 9 wooden do., 4 small iron do., 1 small cube blower, 1 engine and boiler, 1 lot of iron patterns, 1 do. wooden do., 1 do. fuller boards, 3 large iron flasks, 1 crane and fixtures, 1 fan, 1 shaft, 4 pulleys and 3 bolts, 1 lot of small flask boards, 1 small lot of cast-iron, 1 lot of moulding sand, 2 crane needles and 1 hook, 3 shank do., 2 hand do., 1 lot of wooden pillows, 1 do. square, 2 blocks and rope, 2 snap flask boxes, 1 water prough, 1 cover oven, 1 grindstone, 1 shed containing a lot of patterns, iron plate; bridge in front of the foundry.

New Orleans, November 14th, 1864.

(Signed) M. EGAN, *Deputy U. S. Marshal.*

(Here follows plans A and B, page 27.)

30 *Document C.—Filed December 30th*, 1864.

ORDNANCE OFFICE,
New Orleans, Nov'r 4th, 1861.

Mr. George Cronan:

SIR: Please make for the use of the navy one thousand shot, shell, grape, and spherical case shot for guns, from 12-p'dr howitzers to 13-inch mortars. When you come to a calibre above 42-p'ds shot shell is alone required.

Respectfully, &c.,

(Signed) BEVERLY KENNON, *Lt. C. S. N.*

Shot.	Shell.	Spherical c'se.	Grape.	Calibre.
1,000	1,000	1,000	1,000	42-p'dr.
1,000	1,000	1,000	1,000	32-p'dr.
1,000	1,000	1,000	1,000	24-p'dr.
1,000	1,000	1,000	1,000	18-p'dr.
1,000	1,000	1,000	1,000	12-p'dr.

31 Shell alone:

F'r 8-in. guns 1,000 shell; f'r 10-in. guns 1,000 shell; f'r 12-in. guns 1,000 shell; f'r 13-in. guns 1,000 shell.

Ordered by Lieutenant B. Kennon from George Cronan.

Document D.—Filed December 30th, 1864.

ORDNANCE OFFICE,
New Orleans, December 23d, 1861.

SIR: Until further orders you will discontinue casting all kind of missiles other than 32-po'd'rs and 12-p'd'r shot and 8, 9 and 10-inch shell. You will cast two hundred of the 10-inch shell, and then stop the casting of that class also.

Yours, respectfully,

WM. L. BRORFORD,
Lt. C. S. N. and Ord. Officer.

Mr. GEORGE CRONAN, *New Orleans, La.*

32 *Document E.—Filed December 30th, 1864.*

NEW ORLEANS, *April 5th*, 1862.

Received in good order from the C. S. N. laboratory, for account George Cronan, at the foundry, 5 10-in. shell, brass bushes too large; 4 9-in. shell, brass bushes too large; 8 8-in. shell, brass bushes too large.

Document F.—Filed December 30th, 1864.

Dray No. —. NEW ORLEANS, *April 11th*, 1864.

Received from Geo. Cronan, in good order, on board the confederate laboratory, 16 (sixteen) 9-inch shells; 16 (sixteen) 8-inch shells—brass bushing.

(Signed) T. D. LYON,
For W. A. ROBBINS.

33 *Hearing and submission of demurrer.—From the minutes of Jan'y 2d, 1865.*

THE UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY, one lot of ground. } No. 3484.

This cause was this day called up for trial on its merits—district attorney for libellants, Whitaker, Fellows, and Mills, esq'r's, for claimants—when the proctors for the claimant called the attention of

the court to the fact that there is pending in the case the demurrer filed by said claimant, upon which the court has not yet acted. The district attorney moved the court to overrule the same, and, by consent of counsel, said demurrer is now submitted to the decision of the court without argument.

34 *Order overruling demurrer.—From the minutes of Jan'y 5th, 1865.*

UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY and ONE lot of ground. } No. 3484.

The demurrer of the claimant having been submitted on a former day, and the court having considered the same, doth now order that said demurrer be overruled, and that two days be allowed to said claimant to file his answer.

Marshal's return.

Received January 6th, 1864, and on the same day, month, and year served a copy of the within order in the hands of J. G. A. Fellows, esq., one of the partners of the firm of Whitaker, Fellows & Mills, esq'r's, attorneys.

(Signed) G. HOLLANDER, *D'y U. S. Marshal.*

35 *Answer of Geo. Cronan.—Filed January 9th, 1865.*

The United States circuit court, eastern district of Louisiana, sixth circuit.

THE UNITED STATES
vs.
THE ST. LOUIS FOUNDRY. } No. 3484.

And now comes George Cronan, a loyal citizen of the United States and a resident of the city of New Orleans, State of Louisiana, and for answer to the libel of information filed in the above numbered and entitled cause against a certain lot of ground—situated in the rear of the city, in the second district, designated by the No. one on a plan by J. Pilie, dated 9th September, 1843, in square No. 42, bounded by St. Louis, Toulouse, Claiborne, and Robertson streets, and measuring in American measure 25 feet 6 inches front on St. Louis street by 102 feet deep, bounded by lot No. 2, and all the machinery, tools, &c. contained in said building on said lot of ground, the said property being known as the St. Louis Street Foundry—says:

36 I. He admits the seizure as alleged in the first article of the libel.

II. He admits the passage of the act of Congress particularly referred to in second article of said libel.

III. He admits the issuing of the proclamation referred to in the third article of the libel.

IV. 1o. He admits that said property was at different times in the

years 1861 and 1862, previous to the first May of said last-mentioned year, (1862,) used for the purpose of casting shot and shells for the use of the rebel navy; but respondent alleges that said shot and shell were made in said foundry under the express orders of officers of said rebel navy, and during a time when the authorities of the United States exercised no authority or power in protecting the citizens residing in the city of New Orleans, and when the rebel authorities, civil, military, and naval, had and exercised absolute power and authority over all persons and property within said city of New Orleans, and whose orders, as to persons and property, could in no manner be resisted by citizens and persons residing at the time in said city.

IV. 2o. He answers to the 2d of article 4 of the libel, in
37 the same manner as in his answer to No. 1 of said article 4.

IV. 3o. He specially denies the allegations set forth in No. 3 of the 4th article of the libel.

IV. 4o. He answers, to the 4 of article 4 of the libel in the same manner as in his answer to No. 1 of the said 4th article of the libel.

IV. 5o. That the property libelled and seized herein has never become forfeited to the United States.

V. That intervenor purchased said property in the month of January, 1860, from Mary Duncana, and sold the same on the 14th June, 1862, to Lawrence Duffy, as more fully set forth in the claim filed herein by intervenor; and that his interest in said property is that fully set forth in said claim. That intervenor, on the 6th of February, 1864, took and subscribed the oath required by the amnesty proclamation of his excellency Abraham Lincoln, President of the United States, of the date of the 8th December, 1863, and which proclamation and oath releases your intervenor from all and every the effects of the provisions of the said act of the Congress of the United
38 States approved the 6th August, inst., 1861, both as to his person and his property, and specially as to the property libelled and seized in this cause.

VI. That all and singular the premises are true; and in verification whereof, if denied, intervenor prays leave to refer to the proofs to be adduced on the trial of this cause.

Wherefore intervenor prays that the said libel be dismissed, and the property restored, as in his said claim asked for, and that this honorable court will right and justice administer in the premises.

(Signed) GEORGE CRONAN.

WHITAKER, FELLOWS, & MILLS, *Proctors* *George Cronan.*

Sworn to and subscribed before me this 9th day of January, 1865.

(Signed) F. B. VINOT, *Dep. Clerk.*

Plea of amnesty.—Filed January 9th, 1865.

39 United States circuit court for the sixth circuit, eastern district of Louisiana.

THE UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY.

And now comes George Cronan, claimant in the above-numbered and entitled cause, and says that on the 19th February, 1864, and before the institution of these proceedings, having a long time previously renewed his allegiance to the United States, under order No. 41, of Major General B. F. Butler, then commanding the department of the Gulf, he took and subscribed the oath required by the amnesty proclamation of Abraham Lincoln, President of the United States, of the date of the 8th December, 1863, and now, availing himself of the provisions of said amnesty proclamation, prays that this court may be pleased to decree a restitution of the property libelled in this cause, as in the claim of petitioner asked for, and otherwise right and justice to administer in the premises.

(Signed) GEORGE CRONAN.

WHITTAKER, FELLOWS, and MILLS, *Proctors George Cronan.*

Sworn to and subscribed before me this 9th day of January, 1865.

(Signed) F. B. VINOT, *D'y Clerk.*

40 *Oath of allegiance of G. Cronan.*

UNITED STATES OF AMERICA. DEPARTMENT OF THE GULF,
Provost Court, New Orleans, September 22d, 1862.

George Cronan has taken and subscribed the oath required by General Orders No. 41, for a citizen of the United States of America.

Witness Lieut. Colonel J. B. Kinsman, provost judge.

(Signed) E. S. NICKERSER, *Clerk.*

Amnesty oath of George Cronan.

No. 4022. UNITED STATES OF AMERICA, STATE OF LOUISIANA,
Register's Office, city of New Orleans.

Oath.

Geo. Cronan do solemnly swear, in the presence of Almighty God, that I will henceforth faithfully support, protect, and defend
41 the Constitution of the United States, and the union of the States thereunder; and that I will, in like manner, abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves, so long and so far as not repealed, or modified, or held void by Congress, or by decree of the Supreme Court; and that I will, in like manner, abide by and faithfully support all proclamations of the President made during the existing rebellion, having reference to slaves, so long and so far as not modified or declared void by the Supreme Court. So help me God.

(Signed) GEO. CRONAN.

I do certify that on this 19th day of February, 1864, appeared before me Geo. Cronan, who subscribed the foregoing oath.

(Signed) E. M. F. SEICSHUAYDRE, *Register.*

[5-cent I. R. stamp, cancelled.]

Order, cause fixed for trial.—From the minutes of Jan'y 10, 1864.

42 UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY and ONE LOT of ground, &c. } No. 3484.

By consent of parties, ordered that this case be fixed for trial for Friday, 13th instant, at 10 o'clock a. m.

Demurrer of U. S. attorney to Geo. Cronan's plea of pardon.—Filed January 12th, 1865.

UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY, &c., GEORGE Cronan, } No. 3484.

Pending in the U. S. circuit court for the eastern district of Louisiana.

To the honorable the judges of the sixth judicial circuit of the United States, sitting in and for the eastern district of Louisiana:

43 And the said libellants, by Rufus Waples, U. S. district attorney, as to the plea of the said defendant, George Cronan, by him above pleaded, saith that the said plea and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude him, said libellants, from having or maintaining their aforesaid action thereof against the property libelled herein, and that said libellants are not bound by law to answer the same, and the said libellants are ready to verify.

Wherefore the said George Cronan, having filed his plea of pardon in the nature of a plea of confession and avoidance, which said plea being insufficient in law to bar the action of the libellants, they, the said libellants, pray that this their demurrer be sustained, and that judgment be rendered in accordance with the prayer of the libel.

(Signed) RUFUS WAPLES, *U. S. Attorney.*

Minute of evidence.—Filed January 13th, 1865.

44 Minute of evidence on the trial of the demurrer of district attorney to plea of pardon of Geo. Cronan, Jan'y 13, 1865.

Claimant offered in evidence oath of amnesty taken by Geo. Cronan, filed January 9, 1865.

This document is already copied, and will be found in page of this transcript.

Hearing and submission of demurrer.—From the minutes of January 13, 1865.

UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY, &c. } No. 3484.

The cause was called for trial, district attorney for the United States; Whitaker, Fellows and Mills, esqrs., for claimants.

The witness John King and J. W. Donnelly, on part of the United States, and Dr. Riddel, John Clark, and J. E. Wenk, on part
45 of claimant, being absent, on the respective motion of the district attorney and of proctors for claimant, it is ordered that attachments issue for said witness, returnable forthwith.

Whereupon the demurrer herein filed by the district attorney to plea of pardon of said claimant was taken up, and after argument of counsel the said demurrer was submitted.

Default.—From the minutes of January 13*th*, 1865.

THE UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY, &c. } No. 3484.

On motion of district attorney, and on showing to the court that the delay allowed by law has expired, and that no claim or defence has been filed after due monition and proclamation, except that of George Cronan, ordered that all persons interested in the property
46 except the said Geo. Cronan, be pronounced in contumacy and default, and the libel, as to them, adjudged and taken pro confesso.

Judgment.—From the minutes of Feb. 21, 1865.

UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY, ONE LOT OF ground, &c. } No. 3484.

For the reasons orally assigned by the court, it is ordered, adjudged, and decreed that the claim and plea of pardon filed by Geo. Cronan be dismissed, and that the property libelled in this case be condemned as forfeited to the United States.

And it is further ordered that the clerk of this court issue a writ of venditioni exponas to the marshal of the district, returnable on the day of April, 1865, and that upon the return thereof
47 the proceeds be distributed according to law.

Judgment rendered Feb'ry 21, 1865.

Judgment signed March 7, 1865.

(Signed) E. H. DURELL, *Judge.*

Rule for rehearing and new trial.—From the minutes of Feb'y 28, 1865.

UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY and ONE LOT OF ground &c. } No. 3484.

On motion of Whitaker, Fellows & Mills, esq'rs, proctors of George Cronan, claimant, it is ordered that Rufus Waples, esq., U. S. district attorney, show cause on Monday, the 6th of March, 1865, at 11 o'clock a. m., why a rehearing and new trial should not be granted on the final judgment rendered herein by this honorable court, on the 21st February, 1865, for the reasons now filed.

48 *Reasons for rehearing and new trial.—Filed February 28th,* 1865.

United States circuit court, sixth circuit and eastern district of Louisiana.

THE UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY, ONE LOT OF ground. } No. 3484.

1o. That the said decree is contrary to the law pleadings and evidence in said cause.

2o. That said cause has not been heard on its merits.

3o. That the plea of the claimant on the oath taken by claimant on the 19th February, 1864, and which plea was filed on 9th January, 1865, and on the decision of which plea by this honorable court said judgment of the 21st February, 1865, was rendered, does not preclude claimant from a trial on the merits under the issues raised by the answer of claimant, filed on the 9th January, 1865.

49 *Marshal's return on copy of rule and reasons.*

Received March 1st, 1865, and on the same day, month, and year served a copy of the within rule on Rufus Waples, esq., U. S. district attorney, in person.

New Orleans, March 1st, 1865.

(Signed) WILLIAM GRASS,
Deputy U. S. Marshal.

Order on rule.—From the minutes of March 6th, 1865.

UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY, ONE LOT OF ground, &c. } No. 3484.

The rule taken by the claimant on the 28th instant came up for trial.—Whitaker, Fellows & Mills, for plaintiff in rule, district attorney for libellants defendants in rule—when, after hearing argument,
50 the court, perceiving no reasons to disturb the judgment rendered herein, ordered that the rule be discharged and a rehearing refused with costs.

Venditioni exponas.—Issued March 21st, 1865, returned and filed May 17th, 1865.

United States circuit court, sixth circuit and eastern district of Louisiana.

The President of the United States of America to the marshal of the eastern district of Louisiana, or either of his deputies, greeting:

Whereas at a circuit court of the United States holden at New Orleans for and within the said district, on the 21st day of February, 1865, the following described property, to wit: a certain lot of ground, together with all the improvements thereon, rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situate in the rear of this city, in the second district, designated by the No. one on a plan by J. Pilie, dated 9th of September, 1843, in square No. 42[illegible] bounded by St. Louis, Toulouse, Claiborne, and Robertson streets, and measuring in American measure twenty-five feet six inches front on St. Louis street by one hundred and two feet deep, bounded by lot No. two on one side and on the other side by property now or lately belonging to James Flood, all the machinery, tools, &c., contained in the building on said lot of ground,—the said property being known as the St. Louis Foundry, have been decreed condemned as forfeited to the United States, and ordered to be sold at public auction in due course of law, and after due appraisement thereof:

51

These are therefore to command you to sell to the highest bidder public auction, at the Merchants and Auctioneers' Exchange, No. 18 Royal street, within said district, on the 27th day of April, 1865, a 12 o'clock m., the said property as above described, and that the same be sold in accordance with the decree of this honorable court, of date February 21st, 1865, a duly certified copy of which decree is hereto annexed for reference and made part of this writ; first giving thirty days' notice at least of the time and place of sale, by advertising the same in the True Delta and Picayune, two of the newspapers printed in New Orleans, and by proclamation in the usual form on the day of sale; to be paid into the registry of the said court, the money arising from the sale to be disposed of as the law in this case directs, and make due return hereof with your doings herein.

52

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at New Orleans, this 21st day of March, 1865, and 89th year of the independence of the United States of America.

(Signed) F. B. VINOT, *D'y Clerk.*

Certificate from the recorder of mortgages, annexed to venditioni exponas.

OFFICE OF MORTGAGES.

The undersigned, recorder of mortgages for the parish of Orleans, city of New Orleans, State of Louisiana, certifies that in the records in this office there are no other mortgages standing in the name of

the St. Louis Street Foundry, and recorded against the lot
53 of ground described in the printed slip hereto annexed, than the following, to wit:

B. I. 5, fo. 571.—The privilege in favor of the New Orleans Draining Company.

B. P. 1, fo. 391.—The privilege in favor of the first draining district.

New Orleans, April 28th, 1865.

(Signed) J. W. MADDEN, *Recorder.*

[5-ct. int. revenue stamp, canc'd.]

In the United States circuit court, eastern district of Louisiana.

UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY, ONE LOT OF ground, etc. } No. 3484.

By virtue of a writ of venditioni exponas, to me directed in the above entitled suit, I will proceed to sell to the highest bidder, on Thursday, the 27th day of April, 1865, at 12 o'clock m., at the Merchants and Auctioneers' Exchange, No. 18 Royal, between Canal and Custom-house streets, the following described property, viz:

A certain lot of ground, together with all the improvements thereon, rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situate in the rear of this city, in the second district, designated by the number One on a plan by J. Pilie, dated 9th of September, 1843, in square No. 42, bounded by St. Louis, Toulouse, Claiborne, and Robertson streets, and measuring in American measure twenty-five feet six inches front on St. Louis street by one hundred and two feet deep, bounded by lot No. two on one side, and on the other side by property now or lately belonging to James Flood, all the machinery, tools, etc., contained in the building on said lots of ground—the said property being known as the St. Louis Foundry.

Terms.—Cash, at the time of adjudication, in U. S. treasury notes.

United States marshal's office, New Orleans, 22d day of March, 1865.

CUTHBERT BULLITT,
United States Marshal.

Marshal's return.

UNITED STATES OF AMERICA, *Eastern district of Louisiana:*

NEW ORLEANS, *May 17th*, 1865.

Pursuant to this precept, I have caused the property named within to be sold at public auction and to the highest bidder, for cash, on the day and hour and at the place therein designated, having given full thirty days' notice of the time, place, and manner of sale in the True Delta and the Picayune, two of the newspapers printed
54 and published in this city, and by the crier at the day and

time of sale; and at such sale the within-named property was sold to J. D. Powers for nineteen hundred dollars.

Whereby the gross sales amounted to nineteen hundred dollars, which sum I pay over to C. Claiborne, esq., the clerk of the court aforesaid, to be disposed of as the court directs.

Attest: A. BAUDOUIN, *D'y U. S. Marshal.*

Received from Cuthbert Bullitt, United States marshal, nineteen hundred dollars, being, as he saith, the gross proceeds of the aforementioned sale, the money to be disposed of as the court directs, and for which I have signed duplicate receipts.

(Signed) CHAR'S CLAIBORNE, *Clerk.*

New Orleans, May 17th, 1865.

Intervention of M. Gleason.—Filed April 24th, 1865.

United States circuit court.

55 UNITED STATES
vs.
ST. LOUIS FOUNDRY, &c. } No. 3484.

And now comes into court M. Gleason, by R. H. Shannon, his proctor and attorney, and alleges that he is a true and loyal citizen of the United States; that he intervenes for a part of the proceeds of the sale of the property under the decree in this action for the sum of $118, with interest from the 11th day of October, A. D. 1864, which said sum of money is due to the said intervenors as a workman in said foundry, which amount he claims should be paid to him out of said proceeds; that said intervenor also alleges that before the seizure of the said property by the above-named plaintiff, he had obtained a prior lien therein by reason of a judgment obtained in his favor in said court, on the 5th day of October, A. D. 1864, in the third justice's court for the parish of Orleans, against Lawrence Duffy, for the sum of $94 damages, besides $23 costs, the owner of the said property, and a seizure under said judgment according to law.

The said intervenor therefore demands payment of the sum
56 above specified, or such part thereof as he is justly entitled, and for general relief.

(Signed) R. H. SHANNON,
Proctor for M. Gleason.

Let this intervention be filed.

(Signed) E. H. DURELL, *Judge.*

United States appraisers' report.—Filed April 28th, 1865.—*United States appraisers' report.—Confiscated property, &c.*

UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY. } No. 3484.

To the honorable circuit court for the eastern district of Louisiana:

We, the undersigned, appraisers to this honorable court, duly appointed and sworn, have the honor to report that on the twenty-

sixth day of April, 1865, we proceeded to inspect the below described property for the purpose of ascertaining its value at this time, and after a careful and thorough examination, find that the present cash value is as set opposite the property below.

The partition sheds belongs to the property, and may be removed. The property is in bad order, and partly in leased ground, which lease has expired.

The lot	$250 00
Materials in it	750 00
	1,000 00

Two-thirds would be $666 66.

(Signed) H. G. HEARTT,
SAM'L S. HILL,
U. S. Appraisers, N. O.

In the United States circuit court, eastern district of Louisiana.

UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY, ONE LOT OF ground, etc. } No. 3484.

By virtue of a writ of venditioni exponas, to me directed in the above entitled suit, I will proceed to sell to the highest bidder, on Thursday, the 27th day of April, 1865, at 12 o'clock m., at the Merchants and Auctioners' Exchange, No. 18 Royal, between Canal and Custom-house streets, the following described property, viz:

A certain lot of ground, together with all the improvements thereon, rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situate in the rear of this city, in the second district, designated by the number one on a plan by J. Pilie, dated 9th of September, 1843, in square No. 42, bounded by St. Louis, Toulouse, Claiborne, and Robertson streets, and measuring in American measure 25 feet 6 inches front on St. Louis street by 102 feet deep, bounded by lot No. 2 on one side, and on the other side by property now or lately belonging to James Flood, all the machinery, tools, etc., contained in the building on said lots of ground—the said property being known as the St. Louis Foundry.

Terms.—Cash at the time of adjudication, in U. S. treasury notes.

United States marshal's office, New Orleans, 22d day of March, 1865.

CUTHBERT BULLITT,
United States Marshal.

57 *Petition for appeal of Geo. Cronan.—Filed May 26th*, 1865

United States circuit court for the eastern district of Louisiana.

THE UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY, &c. } No. 3484.

To the honorable the judges of the said circuit court:

The petition of George Cronan, claimant in the above entitled cause, respectfully represents, that he feels aggrieved at the judgment rendered in the above entitled cause, and is informed that said judgment is erroneous, and desires to appeal from said judgment to the Supreme Court of the United States; that the amount involved in said claim and in which he is interested is over the sum of two thousand dollars.

Wherefore, petitioner prays that an appeal be allowed to him from said judgment, returnable to said Supreme Court of the United States at Washington, D. C., on or before the first Monday of December next, on petitioner furnishing bond with good and solvent se-
58 curity, in the sum of two hundred and fifty dollars, that all orders required in the premises be rendered.

WHITAKER, FELLOWS & MILLS,
Attorney for Petitioner.

George Cronan, being first duly sworn, says that the amount in controversy in the said beforementioned cause, and his interest therein, amounts to over two thousand dollars.

(Signed) GEORGE CRONAN.

Sworn to and subscribed before me this 2d day of May, A. D. 1865.

(Signed) F. B. VINOT, *D'y Clerk.*

An appeal is allowed in this case as prayed for, returnable to the Supreme Court of the United States the first Monday of December next, the appellant giving bond for costs in the sum of $250, with good and solvent security, conditioned as the law directs, said appeal not to operate as a supersedeas, except so far as the distribution of the proceeds is concerned.

Cancelled by order of court, May 3, 1865.—See minutes of that date.

CHAS. CLAIBORNE, *Clerk.*

Bond for appeal.—Filed May 2d, 1865.

59 Know all men by these presents, that we, George Cronan, of the city of New Orleans, as principal, and John Coleman, also of the city of New Orleans as surety, are held and firmly bound, jointly and severally, unto the United States of America in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said United States of America, or assigns, for which payment, well and truly to be made, we bind our-

selves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the second day of May, in the year of our Lord eighteen hundred and sixty-five.

Whereas G. Cronan, claimant in the suit of the United States *vs.* The St. Louis Street Foundry, one lot of ground, &c., No. 3484, has this day presented a petition to the honorable the circuit court of the United States for the sixth circuit holding sessions in and for the eastern district of Louisiana, praying an appeal to the next term of the Supreme Court of the United States from a final judgment rendered by the said court on the 7th day of March, 1865:

60 Now the condition of the above obligation is, that we, the above-bounden George Cronan and John Coleman, will well and truly pay to the said United States of America, the defendants in said appeal, all such damages as they may recover against us in case it should be decided that the said appeal was wrongfully obtained.

(Signed) GEORGE CRONAN. [SEAL.]
JOHN COLEMAN. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) F. B. VINOT, *D'y Clerk.*

John Coleman, the surety on the within bond, being duly sworn, says he is worth the sum of two hundred and fifty dollars over and above all his debts and liabilities.

(Signed) JOHN COLEMAN.

Sworn to and subscribed before me this 2d day of May, 1865.
(Signed) F. B. VINOT, *D'y C'k.*

Order revoking the order granting the appeal.—From minutes of May 3, 1865.

UNITED STATES
vs.
THE ST. LOUIS FOUNDRY and ONE LOT OF ground, &c. } No. 3484.

61 Ordered that the order of appeal granted on yesterday be *worked* and cancelled, the same having been improvidently granted.

Appraisers' bill.—Filed May 13*th*, 1865.

Confiscated property, No. 3484.

UNITED STATES CIRCUIT COURT,
Appraisers' Depart't, New Orleans, April 27*th*, 1865.

THE UNITED STATES
vs.
ST. LOUIS STREET FOUNDRY.

To appraiser's office, Dr.

H. C. Heartt and S. L. Hill for examination, appraisement, ascertaining income, etc..... $19 00

Marshal's bill.—Filed May 18, 1865.

62 United States circuit court, eastern district of Louisiana.

UNITED STATES MARSHAL'S OFFICE, EASTERN DISTRICT LOUISIANA,
New Orleans, May 7th, 1865.

UNITED STATES
vs.
ST. LOUIS ST. FOUNDRY and ONE LOT OF ground. } No. 3484.

1864.			
Nov.	12.	Order of seizure and 2 notices seizure	$4 00
	12.	Recording do, $1; inventory, $10	11 00
	12.	Ad. warrant, libel, and order	6 00
	12.	Posting, $1; eng. copy, $1	2 00
	12.	Monition pub. in the Era	37 50
	15.	Return on order of seizure	1 00
Dec.	29.	Notice to com'r, do. to att'y, and 3 sum's for test'y	2 50
	30.	Attend'ce on Com'r Claiborne's court	4 00
	31.	3 summons for 2d Jan'y, 1865	1 50
1865.			
Jan'y	6.	Order of court for defendants to answer in 2 days	2 00
	10.	7 sum's def't, 11th, 2 sum's def't, and 7 pl'ff's	8 00
	11.	5 attachments forthwith	10 00
Feb'y	28.	Rule on dist. att'y for rehearing	2 00
	28.	Rule on dist. att'y to show cause	2 00
March	31.	Vend. ex., $2; eng. copy for publication, $1	3 00
	31.	Notice of sale in True Delta, $18; Pic., $18; jud't, $4 50	40 50
April	24.	Bill for making plan of property for sale	25 00
63		Amount forwarded	162 00
	27.	Attendance on sale	5 00
	27.	Commissions on sale, $30, and on disb'nt, $10 66	40 66
	27.	3 proclam'ns, 90 c'ts, and record of proces verbal, $1	1 90
	27.	Recording apprais't $1; return of vend. ex., $1	2 00
	27.	Certificate of mortgage, and cancellations with cert. of do.	4 50
	27.	Use of auction room, Merch. 5 Exch.	5 50
	28.	Marshal's custody to date, 88 days, at $2 50	220 00
	28.	Order to keeper to deliver to purchaser	1 00
		Total costs and charges	442 61

United States commissioner's bill.—Filed May 18th, 1865.

United States circuit court.

UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY, &c. } No. 3484.

To Charles Claiborne, U. S. com'r, Dr.

1864, December 30. For taking testimony of witnesses for libellants in the above suit..... $15

64 *Judgment mentioned in Mr. Gleeson's intervention.—Filed May 19th, 1865.*

State of Louisiana, third justice's court for the parish of Orleans.

M. GLEASON
vs.
LAWRENCE DUFFEY. } No. 7054.

1864. Instituted September 12th, 1864. Pl'ff claims $94, as per bill filed, with interests and costs.

Same day certificate issued; served 13th instant.

Sept. 15. Written answer of def't filed, &c.; $30 deposited.

Sept. 20.—Notice of trial, issued same day.

Oct. 3.—This case came on this day for trial.—Budd & Lambert, att'ys for pl'ff; Warren, esq., for defendant; when, after hearing evidence and argument of counsels, the court took the matter under advisement.

Oct. 5.—The court this day delivered the following judgment: Considering the evidence and the law applicable to the case, it is ordered, adjudged, and decreed that pl'ff recover from defendant the sum of $94, with interest and costs of suit. Judgment signed the same day.

E. MENIER, 3 *J. P.*

65 Oct. 5.—Notice of judgment issued; served 6th instant.

Oct. 11.—Pet., interrogatories, and notice of garnishee issued to H. Cassidy; served 13th instant.

Oct. 13.—Answer of garnishee filed.

NEW ORLEANS, *December 6th*, 1864.

I, undersigned, 3d justice of the peace for the parish of Orleans, city of New Orleans, certify the above to be a true and authentic copy of the judgment and proceedings in the third justice's court in the above case, and on record on docket of said court.

(Signed) ED. MENIER, 3*d J. P.*

Hearing and submission of intervention of Mr. Gleeson.—From the minutes May 19, 1865.

THE UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY. } No. 3484.

The intervention filed by M. Gleeson was this day taken up
66 by consent—district attorney for libellants, R. H. Shannon, esq., for intervenor—and after hearing the pleadings and the admission, the court took time to advise.

Judgment dismissing claim of M. Gleason.—From the minutes of May 23*d*, 1865.

THE UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY, &c. } No. 3484.

The court considering that the claim of M. Gleason is of an ordinary character, without any lien on the libelled property, it is ordered, adjudged, and decreed that the same be dismissed with costs.

Judgment rendered May 23d, 1865.
Judgment signed May 27th, 1865.
(Signed) E. H. DURELL, *Judge.*

Order taxing costs.—From the minutes of May 24, 1865.

67 UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY, &c. } No. 3484.

It is ordered, adjudged, and decreed that the costs, charges, and disbursements in this case be taxed and allowed as follows, to wit:

District attorney, for professional services as attorney of the United States	$65
Marshal's fees and disbursements	442
U. S. commissioner's fees for taking depositions	15
U. S. appraisers' commission, 1 per cent	19
Clerk costs	79
Registrar's commission, 1 per cent	19
Total	640

Marshal's additional bill.—Filed June 6th, 1864.

United States circuit court, eastern district of Louisiana.

UNITED STATES MARSHAL'S OFFICE,
New Orleans, May 30th, 1865.

UNITED STATES
vs.
THE ST. LOUIS FOUNDRY, &c. } No. 3484.

68 *Supplemental bill.*

1865, May. For custody of said property from day of sale .. $26 25

Judgment of distribution.—From the minutes of June 7th, 1864.

UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY, &c. } No. 3484.

The United States marshal having returned into court the writ of venditioni exponas, showing that the libelled property was sold for $1,900 00

It is ordered, adjudged, and decreed that after deducting the costs and charges, heretofore amounting to $640 16

The United States direct tax	6 38	
The city tax of 1864	45 00	
The State tax for 1864	15 85	
And the additional costs due the marshal for keeping	26 25	733 64
One-half of the net balance of		1,166 36

69 Say $583 18 be paid to the United States and the other half, $583 18, to George Washington Stone, the informer.

Letter of G. H. Stone.—Filed June 8th, 1865.

NEW ORLEANS, *November 9th*, 1864.

Rufus Waples, esq., U. S. district attorney:

SIR: A certain lot of ground, with the buildings thereon, situated in the city of New Orleans, bounded by Toulouse, St. Louis, Claiborne, and Robertson streets, and generally known as the St. Louis Street Foundry, together with the tools and machinery therein contained, were used in casting shot and shell and other missiles for the use of the so-called confederate government in the years 1861 and 1862. I give you the below information that the same may be filed in your office, and such action taken by you in the premises as justice may require.

Respectfully signed,

G. H. STONE.

70 *Order for appeal, granted July 26th, 1865, written on the petition for appeal.*

An appeal is allowed in this case, as prayed for, appellant giving bond in the sum of two hundred and fifty dollars for costs.

July 26, 1865.

(Signed) E. H. DURELL, *Judge.*

Bond for appeal.—Filed August 11th, 1865.

Know all men by these presents, that we, George Cronan, of the city of New Orleans, as principal, and James Fallon, are held and firmly bound, jointly and severally, unto the United States of America in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said United States of America and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our
71 heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated the eleventh day of August, in the year of our Lord eighteen hundred and sixty-five.

Whereas George Cronan, claimant in the suit of the United States *vs.* The St. Louis St. Foundry, one lot of ground, &c., No. 3484, did, on the second day of May, 1865, presented a petition to the honorable the circuit court of the United States for the sixth circuit, holding sessions in and for the eastern district of Louisiana, praying an appeal to the next term of the Supreme Court of the United States from a final judgment rendered by the said court on the 7th day of March, 1865:

Now the condition of the above obligation is, that we, the above bounden George Cronan and James Fallon, will well and truly pay, to the said United States of America, the defendants in said appeal, all such damages as they may recover against us in case it should be decided that the said appeal was wrongfully obtained.

(Signed) GEORGE CRONAN. [SEAL.]
(Signed) JAMES FALLON. [SEAL.]

Signed, sealed, and delivered in presence of—
(Signed) B. F. VINOT.

72 James Fallon, the surety on the within bond, being duly sworn, says he is worth the sum of two hundred and fifty dollars over and above all his debts and liabilities.

(Signed) JAMES FALLON.

Sworn to and subscribed before me this 11th of August, 1865.

(Signed) F. B. VINOT, *D'y Clerk.*

Agreement allowing certain plans to be taken to Sup. Court in original.—Filed September 8th, 1865.

U. S. circuit court, eastern district of Louisiana.

UNITED STATES
vs.
THE ST. LOUIS STREET FOUNDRY, &c. } No. 3484.

It is agreed that the plans marked A and B, filed and offered in evidence December 30th, 1864, before the U. S. commissioner, be annexed to the transcript of appeal and go to the appellate court in original.

New Orleans, September 9th, 1865.

(Signed) RUFUS WAPLES, *U. S. Attorney.*
(Signed) WHITAKER & FELLOWS,
Proctors for Claimants.

73 THE UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

The President of the United States to the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petition and order of appeal filed in the clerk's office of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, wherein George Cronan, claimant and intervenor, is appellant, and the United States of America, plaintiff in error, are defendants, to show cause, if any there be, why the judgment rendered against the said appellant, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this eleventh day of August, in the year of our Lord one thousand eight hundred and sixty-five.

E. H. DURELL, *Judge.*

74 *Marshal's return.*

Received August 14th, 1865, and same day, month, and year served a copy of this notice on the defendant named herein by delivering it into the hands of Rufus Waples, esq., personally, he being the U. S. district attorney for the eastern district of Louisiana.

Ret'd, N. Orleans, August 14th, 1865.

J. J. PREIS,
Deputy U. S. Marshal.

75 UNITED STATES OF AMERICA:

Circuit court of the United States, sixth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, Charles Claiborne, clerk of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, do hereby certify that the foregoing 74 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of United States *vs.* the St. Louis Street Foundry, one lot of ground, &c., No. 3484 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 19th day of October, A. D. 1865.

[SEAL.] CH'S CLAIBORNE, *Clerk.*

[5-cent stamp, cancelled.]

I, Edmund H. Durell, United States judge for the eastern district of Louisiana, do hereby certify that Charles Claiborne, whose name is signed to the above certificate as clerk of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 19th day of October, A. D. 1865.

E. H. DURELL, *Judge.*

[5-cent stamp, cancelled.]

Filed August 12, 1865.

O

75 UNITED STATES OF AMERICA:

Circuit court of the United States, sixth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, Charles Claiborne, clerk of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, do hereby certify that the foregoing 74 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of United States *vs.* the St. Louis Street Foundry, one lot of ground, &c., No. 3484 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 19th day of October, A. D. 1865.

[SEAL.] CH'S CLAIBORNE, *Clerk.*

[5-cent stamp, cancelled.]

I, Edmund H. Durell, United States judge for the eastern district of Louisiana, do hereby certify that Charles Claiborne, whose name is signed to the above certificate as clerk of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 19th day of October, A. D. 1865.

E. H. DURELL, *Judge.*

[5-cent stamp, cancelled.]

Filed August 12, 1865.

O

In the Supreme Court of the United States.

THE ST. LOUIS STREET FOUNDRY AND GEORGE CRONAN, CLAIMANT, APPELLANT,

vs.

THE UNITED STATES.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

STATEMENT OF CASE.

On the 12th November, 1864, the United States Marshall in Louisiana seized a lot and the building thereon, and the tools and machinery therein contained, and on the same day the property was proceeded against by the United States Attorney, under the act of 6th August 1861. (12 Statutes at Large, p. 319. See the libel, Record, pp. 1 to 3.)

There are many matters in the Record not necessary to notice, and I come at once to the plea of amnesty and pardon of the claimant, George Cronan.

On the 9th January, 1865, George Cronan, the claimant of the property, filed his plea, stating that he had taken the oath required by general orders No. 41, of Major General Butler, commanding Department of the Gulf, and that on 19th February, 1864, he had taken the oath of amnesty and pardon invited by the President's proclamation of 8th December, 1863. (See Record, p. 16.)

To this plea the United States District Attorney filed, on January 12, 1865, a demurrer, maintaining it to be insufficient in law, and praying for judgment in accordance with the prayer of the libel. (See Record, p. 17.)

On the 21st February, 1865, the court below gave judgment dismissing the claim and plea of pardon filed by George Cronan, and condemning the property. (See Record, p. 18.)

Previously to filing the above plea, George Cronan had

filed a formal claim and answer to the libel, on the 9th January, 1865. (See Record, pp. 14 and 15.)

From the judgment of 21st February, 1865, the claimant, George Cronan, has appealed.

Points.

1. It is a matter of history that the general orders of General Butler, No. 41, invited the inhabitants of his department to declare themselves, by oath of allegiance, in pursuance of the provisions of the sixth section of the act of 17th of July, 1862. (12th Statutes at Large, p. 591, and the President's Proclamation, issued in pursuance of said act, on 25th July, 1862, No. 15, 12th Statutes at Large, p. 1,266.) And George Cronan, by taking that oath, evidenced a return to allegiance, which it is not pretended he has violated, for the averments of the libel are in relation to events which took place prior to the occupation of the city by the Union forces on 1st of May, 1862.

2. The amnesty proclamation of President Lincoln, of December 1863, (see Appendix, p. vii to ix, of acts of 1863—1864,) was issued by virtue of the authority vested in him by the Constitution and the 13th section of the act of July 17, 1862, (see 12th Statutes at Large, p. 592,) authorizing him to extend to persons who may have participated in the rebellion pardon and AMNESTY, on such conditions as he may deem expedient for the public welfare; and the only condition he imposed for pardon and the *restoration of all property*, except slaves, was that the party should take, keep, and maintain an oath, the form of which is given in the proclamation itself.

3. George Cronan, the claimant, took the amnesty oath, and there is no pretense that he has ever violated it; and after that there could be no pursuit of his person or property for any act done by him before the 8th December, 1863; and all the acts alleged in this libel were before that.

4. The amnesty had the legal effect of burying all the past in oblivion. The facts of the libel do not, in law, exist, and this is a *presumptio juris et de jure*, against which no proof is admissible. (Vattel's Law of Nations, book IV, chap. 2, §§. 20, 21.)

5. The averments of the libel charge the use of the premises to aid the rebellion by the act or consent of the owner. That act and consent, after amnesty, cannot be heard of in court, for amnesty carries with it the abolishment of the crime, the prosecution and the condemnation. (See the Case

of Clemency, Sirey, 1826, 1, p. 164. Charasson's case, Sirey, 1839, 1, 984.)

6. The plea of amnesty is not a plea in the nature of a confession and avoidance. It does not confess the crime, but avers that in law no such crime ever existed.

7. The court below, on overruling the plea of amnesty, should not have given judgment of condemation, but proceeded to try the case on the merits.

Respectfully submitted,

THOMAS J. DURANT,
for George Cronan.

April 3, 1867.

filed a formal claim and answer to the libel, on the 9th January, 1865. (See Record, pp. 14 and 15.)

From the judgment of 21st February, 1865, the claimant, George Cronan, has appealed.

Points.

1. It is a matter of history that the general orders of General Butler, No. 41, invited the inhabitants of his department to declare themselves, by oath of allegiance, in pursuance of the provisions of the sixth section of the act of 17th of July, 1862. (12th Statutes at Large, p. 591, and the President's Proclamation, issued in pursuance of said act, on 25th July, 1862, No. 15, 12th Statutes at Large, p. 1,266.) And George Cronan, by taking that oath, evidenced a return to allegiance, which it is not pretended he has violated, for the averments of the libel are in relation to events which took place prior to the occupation of the city by the Union forces on 1st of May, 1862.

2. The amnesty proclamation of President Lincoln, of December 1863, (see Appendix, p. vii to ix, of acts of 1863—1864,) was issued by virtue of the authority vested in him by the Constitution and the 13th section of the act of July 17, 1862, (see 12th Statutes at Large, p. 592,) authorizing him to extend to persons who may have participated in the rebellion pardon and AMNESTY, on such conditions as he may deem expedient for the public welfare; and the only condition he imposed for pardon and the *restoration of all property*, except slaves, was that the party should take, keep, and maintain an oath, the form of which is given in the proclamation itself.

3. George Cronan, the claimant, took the amnesty oath, and there is no pretense that he has ever violated it; and after that there could be no pursuit of his person or property for any act done by him before the 8th December, 1863; and all the acts alleged in this libel were before that.

4. The amnesty had the legal effect of burying all the past in oblivion. The facts of the libel do not, in law, exist, and this is a *presumptio juris et de jure*, against which no proof is admissible. (Vattel's Law of Nations, book IV, chap. 2, §§. 20, 21.)

5. The averments of the libel charge the use of the premises to aid the rebellion by the act or consent of the owner. That act and consent, after amnesty, cannot be heard of in court, for amnesty carries with it the abolishment of the crime, the prosecution and the condemnation. (See the Case

of Clemency, Sirey, 1826, 1, p. 164. Charasson's case, Sirey, 1839, 1, 984.)

6. The plea of amnesty is not a plea in the nature of a confession and avoidance. It does not confess the crime, but avers that in law no such crime ever existed.

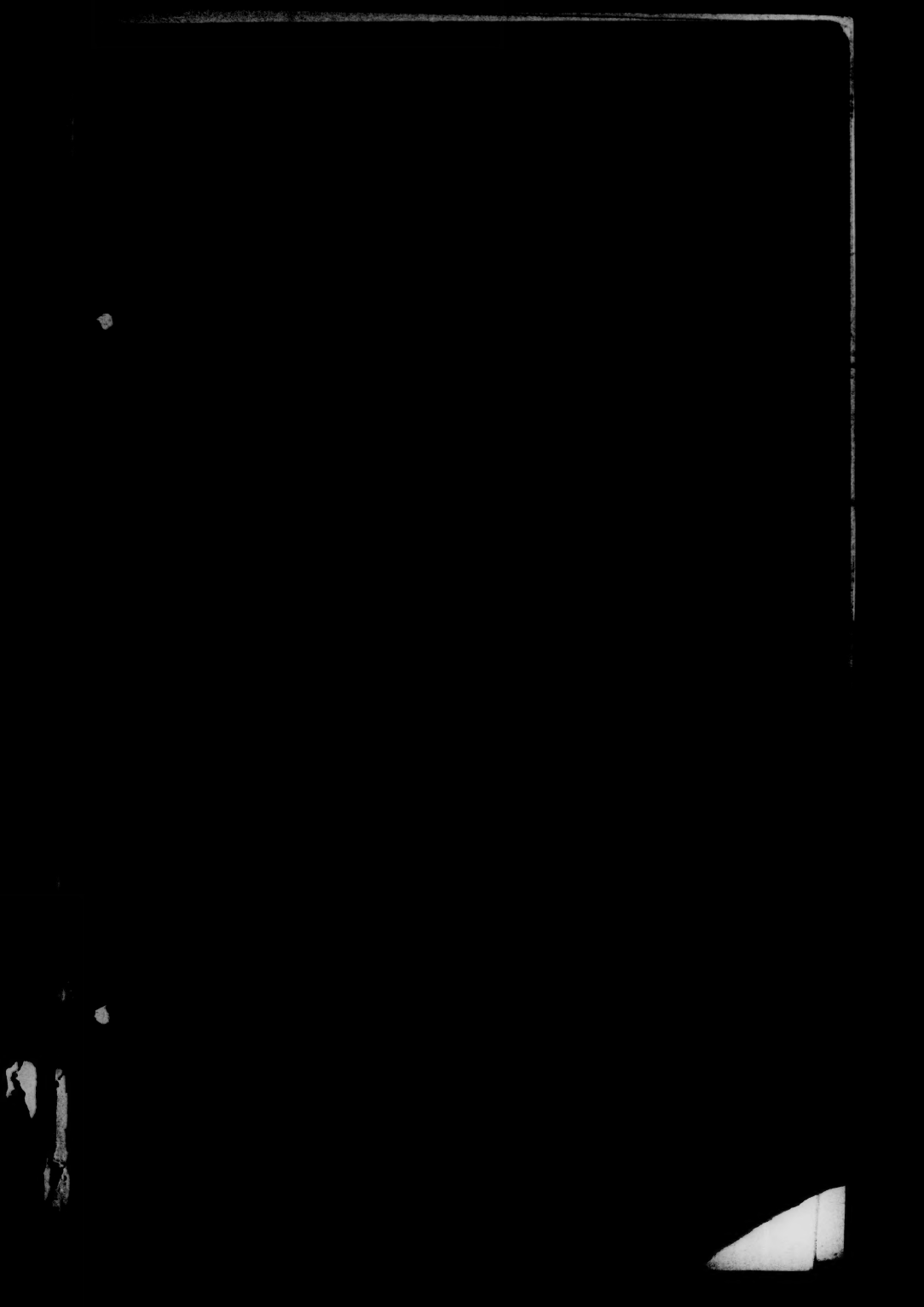
7. The court below, on overruling the plea of amnesty, should not have given judgment of condemation, but proceeded to try the case on the merits.

Respectfully submitted,

THOMAS J. DURANT,

for George Cronan.

April 3, 1867.



In the Supreme Court of the United States.

DECEMBER TERM, 1867.

THE ST. LOUIS STREET FOUNDRY; GEO. CRONAN, CLAIMANT, APPELLANT,
vs.
UNITED STATES.
} No. 76.

Appeal from the Circuit Court of United States for the Eastern District of Louisiana.

I. The claim interposed here was for the unpaid amount of a purchase-money mortgage executed to the claimant Cronan, in June, 1862, by his vendee, Lawrence Duffy. Cronan had owned the property from 186) to June 4, 1862, and manufactured there shot and shell for the rebel army and navy during the entire period of the rebel occupation of New Orleans. On June 4, 1862, he sold the property to Lawrence Duffy, the superintendent of the foundry during the period mentioned, (Rec., p. 8,) for $6,958 37, represented by six promissory notes of various amounts, secured by mortgage on the property. At the time of the seizure about one-half of this purchase money had been paid as alleged in the claim, leaving the balance of about $3,000 due the claimant. (Rec., p. 6.) Cronan demanded restitution of this interest.

He subsequently interposed a demurrer to the libel of information, which was overruled by the court, with.

leave to the claimant to answer the information. (Rec., p. 14.)

He thereupon filed an answer, which is an admixture of a general traverse and special plea in bar. (Rec., p. 14.) In this so-called answer he set up the defences—1st. That the shot and shell made in the St. Louis street foundry in 1861 and 1862 were so made under the express orders of officers of the rebel navy; and, 2d. That on February 6, 1864, the claimant took and subscribed the oath required by the amnesty proclamation of President Lincoln, of December 8, 1863, which he averred released him from all and every the effects of the act of August 6, 1861, as to his person and property. (Rec., p. 15.)

On the same day he filed a special plea of *amnesty*. (Rec., p. 16.)

To this plea the United States District Attorney filed a demurrer. (Rec., p. 17.)

The judgment of the court was that "the claim and plea of pardon filed by George Cronan be dismissed, and that the property libelled in this case be condemned as forfeited to United States." (Rec., p. 18.)

From this decree the present appeal is taken.

II.—(*a*) In reference to the plea of pardon and amnesty, as it is termed, nothing need be said save what this court has said, in the case of the Gray Jacket, concerning the effect and operation of the amnesty proclamation of December 8, 1863, and the taking of the oath which it prescribed. In that case this court (speaking by Mr. Justice Swayne) said:

"There is no satisfactory proof that the claimant is not in one of the classes of excepted persons. His own affidavit, under the circumstances, is clearly insuffi-

cient to establish the negative. 'Property cases, where the rights of third parties shall have intervened,' are excluded in terms by said proclamation. The proclamation is founded upon the act of July 17, 1862, and has reference only to property subject to confiscation, as there denounced.

"Both the statute and proclamation are wholly silent as to maritime captures like the one before us, and neither has any application to that class of cases." (5 Wallace, 368.)

And herein the decision of this court, on the point first mentioned in the above citation, agrees with the common law doctrine:

"If the body of a general act of pardon either except divers persons by name, or except all who come under a general description, as all who adhered to J. S., the court cannot give any one the advantage of it unless he pleads it, and show, in the first case, that he is not one of the persons excepted, and in the other, that he is not included in such description." (Bacon's Abr., tit. "Pardon," G.)

The claimant's plea does not conform to the requirement of this rule, and was therefore fatally defective upon this, if on no other, ground.

(*b*) As to the general question of the operation and effect of a pardon upon property confiscable under the act of August 6, 1861, we refer to the Brief of the government in No. 74, the case of Armstrong's foundry.

III.—The claimant contends that, in overruling the plea of amnesty, the court should not have given judgment of condemnation, but proceeded to try the case on the merits. To this we reply: (*a*) That *non constat*, so far as this record discloses the fact, the court did

not try the case on the "merits." The judgment first overruled the plea, and then condemned the property. (Rec., p. 18.) The latter part of the judgment was, probably, the result of a consideration of the proofs, of which this record seems to be unusually full.

(*b*) But it is not the law that a judgment on such a plea should be *respondeat ouster*. Even in criminal cases, if the defendant's plea be adjudged against him, he shall not have judgment to answer over, but the decision will operate as a conviction. This is the English rule in misdemeanors. (8 East., 112; Hawk., b. 2, c. 31.)

And in some of the States of the Union, when a demurrer to an indictment for a misdemeanor has been overruled, the defendant will not be permitted to plead to the indictment, as a matter of right; he must lay a sufficient ground before the permission will be granted. (37, Maine, 329; 19 Conn., 478; 2 Yerger, 472; 17 Vermont, 151.)

The common law rule must prevail in the courts of the United States in criminal cases.

IV. The judgment of condemnation was correct on the merits. The claimant, who owned the property in 1861–'62, was divested of all title by operation of the forfeiture pronounced by the act of 1861. He conveyed no title to Duffy in 1864; and therefore Duffy's mortgage to him was worthless.

HENRY STANBERY,
Attorney General.
J. HUBLEY ASHTON,
Special Counsel of U. S.

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Supreme Court of the United States.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

LEROY M. WILEY, DEFENDANT IN ERROR.

THE UNITED STATES, APPELLANT,

vs.

1756 SHARES OF THE CAPITAL STOCK OF THE GREAT WESTERN R. R. CO., OF 1859, (OF ILLINOIS,) LEROY M. WILEY, CLAIMANT AND APPELLEE.

No. 184, of December Term, 1866.

Brief for Defendant in Error and Appellee.

J. LAROCQUE, *Of Counsel.*

New-York:
JOHN W. AMERMAN, LAW PRINTER,
No. 47 CEDAR STREET.
1867.

Supreme Court of the United States.

THE UNITED STATES, Plaintiff in Error,
vs.
LEROY M. WILEY, Defendant in Error.

THE UNITED STATES, Appellant,
vs.
1,756 Shares of the Capital Stock of the Great Western Rail-Road Company of 1859, LEROY M. WILEY, Claimant and Appellee.

Statement and Points for LEROY M. WILEY, *Defendant in Error and Appellee.*

STATEMENT.

These causes originated in an information filed in the District Court of the United States for the Southern District of New-York, by E. Delafield Smith, Esq., United States District Attorney, on behalf of the United States, and of one Charles Gould, named as informer, under the acts of Congress of 1861 and 1862, commonly known as the confiscation acts, for the confiscation and forfeiture of a large amount of stock in an Illinois rail-road corporation, and of upwards of $50,000 due on coupons of bonds of the same corporation, as property of the present defendant in error and appellee, on the twofold ground alleged in the information:

1st. Of alleged use of the property by Mr. Wiley in aid of the rebellion, under the act of 1861.

2d. Of alleged treasonable and rebellious acts of Mr. Wiley, under the act of 1862. (Information, record, page 2.)

A claim and answer having been interposed by Mr. Wiley, objecting specially to the jurisdiction, and also tendering an issue to the facts alleged in the information, were stricken out by the District Court, on the ground that Mr. Wiley, being a resident of a State declared by proclamation of the President to be in rebellion, was an alien enemy, and incapable of appearing, claiming or defending in a court of the United States. (Record, pages 8, 14.)

A similar claim and answer, interposed by the Great Western Rail-Road Company, as trustee for the owner of the stock and coupons, were also stricken out, on the ground that the Company had no such interest in the property as to authorize it to appear and claim or defend. (Record, pages 13, 17.)

A sentence of condemnation by default was accordingly entered in the District Court, directing the Company to cancel the certificates of stock in the name of Mr. Wiley on its books, and to issue new certificates to the clerk of the court therefor, and adjudging a sale of the stock and distribution of the proceeds, after certain deductions, in equal moieties to the United States and to Charles Gould, the informer. (Record, page 28.)

A remarkable peculiarity of this case is, that while the learned District Court required proof to be made of the allegations of the information before proceeding to a sentence of confiscation, and while all the proof taken, if it tended to prove any thing as a cause of forfeiture, pointed to alleged acts of Mr. Wiley, the owner of the property, in aid of the rebellion, *and not to any use of the property* for that purpose, (which indeed would have been impossible in the nature of things, the property being stock in an Illinois corporation,) and therefore, if it authorized a condemnation at all, justified it under the act of 1862 only, under which the whole proceeds of the forfeiture go to the use of the United States, and nothing to that of the informer, the decree of the District Court in this case expressly gave half to the use of Charles Gould, the informer. (Record, pages 20, 24, 27, 29.)

From this sentence of the District Court the present defendant in error and appellee took both a writ of error and appeal (for greater caution, as it might admit of question which was the appropriate remedy) to the Circuit Court. (Record, pp. 29, 32, 34.)

He assigned errors under his writ of error, and the District Attorney joined in error. (Record, pp. 38, 39.)

The Great Western Rail-Road Company also took an appeal, but not a writ of error. (Record, pp. 30, 31.)

The cause was duly argued in the Circuit Court, before Mr. Justice Nelson, and judgment rendered after advisement, reversing the judgment and sentence of the District Court, on the double ground, as stated in the opinion, of want of jurisdiction—for the reason that the property, being stock of an Illinois corporation, was incapable of being found, seized, taken or brought within the Southern District of New-York—and of error in striking out the claim and answer of Mr. Wiley, and dismissing the information filed in the court below, and discharging the property from the alleged seizure by the Marshal. (Record, p. 40.)

From this judgment of reversal a writ of error and appeal were taken on behalf of the United States to this court, on the 25th and 28th days of July, 1865. (Record, pp. 1, 41.)

Prior to this, to wit, on the 20th July, 1865, the President of the United States had granted to Mr. Wiley, and caused to be delivered to him, a full pardon, which Mr. Wiley accepted, and took the prescribed amnesty oath. This fact was immediately brought to the notice of the District Attorney, and of other counsel representing the United States, at his instance, but without effect.

In December, 1865, a motion was made and argued on the part of the present defendant in error and respondent, before this court, to allow this pardon, and to dismiss the writ of error and appeal of the United States on that ground, as well as on others no longer important. That motion was ordered by the court to stand over, to be heard in connection with the argument of the cause upon its merits, by the order which forms Appendix A. hereto.

Copies of the pardon, acceptance, amnesty oath and certificates of the Secretary of State of the filing of the same in his office, and affidavits as to the above facts, are contained in the printed motion papers, presented to the court with the record.

The original pardon is also produced before the court.

Immediately upon the pronouncing in the Circuit Court for the Southern District of New-York of the judgment of reversal of the sentence of condemnation and forfeiture, passed by the District Court for that district, a new information, claiming the condemnation and forfeiture of the same property, on the same grounds, was filed in the District Court for the Southern District of Illinois, by the District Attorney for that district, and is still pending. (Motion papers, page 5.)

One object of the motion, as originally made, was also (in the event of the non-allowance of the pardon) to obtain an order directing an election by the Attorney-General between this appeal and writ of error and the new information in Illinois. That, of course, however, is also no longer important. That the Attorney-General has full power over both proceedings—see the orders of the President of November 13, 1862, and January 8, 1863, contained in the brief formerly filed on the motion to dismiss this appeal and writ of error, and the third section of the confiscation act of August 6, 1861, on which those orders are founded.

POINTS IN RELATION TO THE PARDON.

First.—The pardon, of which a copy is set forth in the moving papers, and the original now produced in court, and the acceptance and compliance with the terms thereof by the defendant in error and appellee, discharged and remitted the forfeiture for which the sentence of condemnation was pronounced in the District Court, by pardoning the acts, by which alone, if at all, that forfeiture was incurred. The pardon should, therefore, be allowed, and the present proceed-

ings to re-instate that sentence or judgment, by a review of the judgment of the Circuit Court reversing it for want of jurisdiction in the District Court, and for errors committed by that court, should be dismissed.

I. The Constitution of the United States, Art. 2, sec. 2, provides: "The President shall have power to grant re-
" prieves and pardons for offences against the United States,
" except in cases of impeachment."

II. "As the power has been exercised from time immemo-
" rial by the Executive of that nation whose language is our
" language, and to whose judicial institutions ours bear a
" close resemblance, we adopt their principles respecting the
" operation and effect of a pardon, and look into their
" books for the rules prescribing the manner in which it is
" to be used by the person who would avail himself of it."

Ch. J. Marshall, in U. S. *vs.* Wilson, 7 *Peters*, 160; 10 *Cond.* 438.

Mr. J. Wayne delivering the opinion of the court, *Ex parte* Wells, 18 *Howard*, 310.

III. "The language used in the Constitution, conferring
" the power to grant reprieves and pardons, must be con-
" strued with reference to its meaning at the time of its
" adoption. At the time of our separation from Great Bri-
" tain, that power had been exercised by the King as the
" chief executive. Prior to the Revolution, the colonies be-
" ing in effect under the laws of England, were accustomed to
" the exercise of it in the various forms, as they may be found
" in the English law books. They were, of course, to be
" applied as occasions occurred, and they constituted a part
" of the jurisprudence of Anglo-America. At the time of
" the adoption of the Constitution, American statesmen were
" conversant with the laws of England, and familiar with
" the prerogatives exercised by the crown. Hence, when

"the words to grant pardons were used in the Constitution, "they conveyed to the mind the authority exercised by the "English crown, or by its representatives in the colonies. "At that time, both Englishmen and Americans attached "the same meaning to the word pardon. In the convention "which framed the Constitution, no effort was made to define "or change its meaning, although it was limited in cases of "impeachment."

Mr. J. Wayne, delivering the opinion of the court, *Ex parte* Wells, 18 *Howard*, 311.

IV. "We must, then, give the word the same meaning as "prevailed here and in England at the time it found a place "in the Constitution. This is in conformity with the prin- "ciples laid down by this court in Cathcart *vs.* Robinson, 5 "*Peters*, 264, 280, and in Flavell's case, 8 *Watts & Sargent*, "197, *Attorney-General's Brief*."

Ibid.

V. "A pardon is said, by Lord Coke, to be a writ of "mercy, whereby the King, either *before* attainder, sentence "or conviction, or *after*, *forgiveth* any crime, offence, pun- "ishment, execution, *right*, *title*, *debt or duty*, temporal or "ecclesiastical."

3 *Inst.* 233.

VI. "In the first, (common parlance,) it is forgiveness, "*release*, *remission*. Forgiveness for an offence, whether it "be one for which the person committing it is liable in law "or otherwise. *Release from pecuniary obligation, as where "it is said, I pardon you your debt.* Or it is the *remission "of a penalty*, to which one may have subjected himself by "non-performance of an undertaking or contract, or *when a "statutory penalty* in money has been incurred, and it is "remitted by a public functionary having power to remit it.

"In the law it has different meanings, which were as well "understood when the Constitution was made as any other "legal word in the Constitution now is."

Ex parte Wells, 18 *How.* 309, 310, opinion of the court.

VII. That the pardon of an offence remitted and discharged also, at common law, all penalties and forfeitures incurred by reason of it, in which others than the King had not private vested rights, the following additional authorities clearly establish:

5 *Rep.* 49, Vaughan's case.
Cro. Car. 198, King and Cordington *vs.* Rodman.
Godbolt's R. 178, Marriott's case.
Siderfin's R. 265, Lock *vs.* Etherington.
2 *Salk.* 458, Rex. & Reg. *vs.* Wilcox.
Jac. Law Dic. Pardon, 4.

See, also,

10 *Johns. R.* 232, Deming's case.
28 *Penn. State R.* 297, Cope *vs.* The Commonwealth.
1 *Parker Crim. R.* 4, People *vs.* Potter.

In Lock *vs.* Etherington (*ubi supra*) it is said to have been resolved, on conference between the barons of the exchequer and other judges, that the word "pardon" includes in itself the word "release," "for all which is not excepted, is, by "the general words, pardoned and remitted." (See, also, act of February 20, 1863, 12 *U. S. Stat.* 656.)

VIII. It follows that the President, by a pardon, has power not only to absolve from the corporeal punishment prescribed by law for an offence, but to remit, forego and discharge, also, the forfeitures of property and penalties consequent upon its commission.

IX. That the pardon granted in this case was intended

to have that full effect, is evident from the language used in it. It recites that the recipient "has made himself liable to "heavy pains and penalties." It grants him "*a full pardon* "*and amnesty* for all offences by him committed, arising "from participation, direct or implied, in the said rebellion." It is conditioned "that he first pay all costs which may have "accrued in any proceedings hitherto instituted against his "person *or property*."

The word "amnesty" is, if possible, more comprehensive than the word "pardon." It is a covenant and grant of *oblivion* of all offences committed.

X. The condition, as to the payment of costs, on the face of the pardon, is only declaratory of the well-established rule at common law, in all cases of pardon, even without such express reservation.

Its appearance here furnishes the clearest evidence that the proceedings against the property of the respondent are not to be further prosecuted.

SECOND.—It is no answer to the motion to dismiss the present writ of error and appeal on the ground of the pardon, that Mr. Charles Gould, the informer named in the information filed in the District Court, and to whom half of the proceeds of the property were adjudged to be distributed by the sentence of the court below, has a vested right in that moiety, which cannot be divested by the pardon.

I. As was well pointed out by Mr. J. Nelson, in delivering the opinion in the Circuit Court, the sentence of the District Court was manifestly erroneous and unauthorized in that respect, as it proceeded upon the alleged personal offences of the owner against the act of 1862, which gives no part of the proceeds to the informer, and not upon any use of the property in aid of the rebellion, under the act of 1861, in which case alone the informer is entitled to share. (Act

of August 6, 1861, sec. 3, 12 *U. S. Stat.*, 319. Act of July 17, 1862, sec. 7, *Ibid*, 591.) This is evident from the evidence in the record, on which the sentence of condemnation is based, although it is wholly silent as to its own moving cause. (Record, pp. 20, 24, 27, 29.)

II. There is, undoubtedly, authority for the proposition that the Crown of England cannot, by a pardon of an offence against a popular or penal statute, whereby a part of the penalty is given to the informer, remit that part after information brought, on the ground that thereby the informer has acquired a private property in his part of the penalty.

3 *Inst.* 238.
4 *Blacks. Comm.* 309.
2 *Hawk. P. C.* 392.
Comyn's Digest, Pardon, F.

III. Yet even there, in Dr. Groenvelt's case, convicted of malpractice by the censors of the College of Physicians, and committed for a fine payable wholly to the college, and brought before the King's Bench on *habeas corpus*, it was held by Lord Ch. J. Holt and his associates:

"That although the fine belongs to a subject by the King's grant, as in this case to the College of Physicians, yet the King, by pardon of the offence before the fine is set, may in like manner pardon the fine. And as to the objection, that by this means the King may make his own grant ineffectual, the court assumed and resolved that the King, neither by grant nor otherwise, can pass his power, or extinguish that power which he hath to pardon offences. For (per Holt, Ch. J.) it is a personal trust and prerogative in him, for a fountain of grace and bounty to his subjects, as he observes them deserving or useful to the public. And, (per Rokeby, J.,) as he cannot but have the administration of public revenge, so he cannot but have a power to remit it by his pardons, when he judges it proper. *Of necessity, then, when the offence is pardoned, the fine is destroyed, to whomsoever it*

may belong; because the fine is the penalty of an offence, and as there is no offence where the crime is pardoned, so there cannot be any penalty imposed for the offence."

Dr. Groenvelt's Case, 1 *Ld. Raymond*, 214.

IV. In the case of the United States *vs.* Morris, 10 *Wheaton*, 246, it was adjudged by this court, after the most careful and elaborate consideration, that the power of remitting forfeitures under the revenue laws, vested in the Secretary of the Treasury by act of March 3, 1797, (1 *U. S. Statutes at Large*, 506,) might be exercised by remitting the moiety given to the officers of the customs by the acts of Congress, as well as that belonging to the United States, even after condemnation, and at any time before the proceeds were actually in the hands of the Collector, ready for distribution. It is put in the opinions both of Mr. J. Thompson and of Mr. J. Johnson, upon the broad ground that penal laws, giving parts of penalties or forfeitures to the informer or prosecutor, are made for the benefit of the public, and not of individuals, and are subject to the exercise of the pardoning power, in the same manner as though none but the public had any interest. The principle decided is amply broad to cover this case.

See, also,

McLane *vs.* United States, 6 *Peters*, 404.
State of Maryland *vs.* Baltimore and Ohio R. R. Co., 3 *How.* 534; 15 *Cond.* 541.
United States *vs.* Lancaster, 4 *Wash. C. C. R.* 64.

V. The act of May 26, 1790, giving power to the Secretary of the Treasury to remit forfeitures under the revenue laws in certain cases, (1 *U. S. Stat. at Large*, 172,) contained a provision, "that nothing herein contained shall be construed "to affect the right or claim of any person to that part of "any fine, penalty or forfeiture incurred by breach of either

" of the laws aforesaid, which such person may be entitled " to by virtue of the said laws, in cases where a prosecution " has been commenced or information has been given before " the passing of this act."

Congress, in renewing this act, by act of March 3, 1791, (1 *U. S. Stat.* 218,) expressly provided, " that nothing in the " said act shall be construed to limit or restrain the power " of the President of the United States to grant pardons for " offences against the United States," thus giving a legislative construction, at that early day, that his power under the Constitution was not thus restricted.

VI. By express provision of the Confiscation Act of July 17, 1862, (sec. 13, 12 *U. S. Stat. p.* 592,) the President was authorized at any time, " by proclamation, to extend " to persons who may have participated in the existing " rebellion, in any State or part thereof, *pardon* and *amnesty*, " with such exceptions and at such time, *and on such condi-* " *tions as he may deem expedient for the public welfare.*" All rights acquired by the informer in this case were subsequent and subject to that provision, and could be and were remitted by the pardon, which contains no reservation of them; and this is none the less so that Congress in its wisdom has since seen fit to repeal that provision. Such repeal could of course have no retroactive effect as to a pardon already granted.

VII. The tender of an amnesty and pardon by President Lincoln, by his proclamation of December 8, 1863, (12 *U. S. Stat., App. VII.*,) " with restoration of all rights of pro- " perty, except as to slaves, and in property cases where " rights of third parties shall have intervened," does not affect this case. It was not the basis of this pardon; and evidently intended to except only cases of *bona fide* purchasers of forfeited property.

VIII. Nor are the words " except in cases where legal " proceedings under the laws of the United States, provid-

"ing for the confiscation of property of persons engaged in "rebellion have been instituted," in the President's proclamation of 29th May, 1865, applicable to this case. They apply only in the connection in which they are used, to those coming *within the general amnesty and pardon granted by the proclamation itself.* Under special circumstances the President could and undoubtedly would withdraw that exception as to such persons. The present defendant in error *was in one of the classes excepted by that proclamation;* and was obliged, therefore, to apply for and obtain a *special pardon*, which contained *no such reservation or exception.*

The rule at common law is, that the pardon is to be taken most strongly against the King. (5 *Rep.* 49, Vaughan's case; *Ibid* 50, Wyrrall's case.)

IX. In this particular case, moreover, by the reversal of the sentence of condemnation pronounced by the District Court in the Circuit Court, both in contemplation of law and by the express words of the judgment of the Circuit Court, the seizure, the information and the sentence of forfeiture founded thereon, were swept out of existence, and became as though they had never been. There was, therefore, no information pending when the pardon was granted; and in that case all the authorities agree that the whole of the forfeiture, as well what would belong to the Government as that which would be recovered by the informer, may be remitted. (Record, p. 40.)

X. The power of the learned District Attorney, who brought this writ of error and appeal to prosecute for the informer, ceased with the judgment. (1 *Roll. Abr.* 295, pl. 25; Macbeath *vs.* Cooke, 1 *Moore & Payne*, 513; 4 *Bing.* 578; Kellogg *vs.* Gilbert, 10 *Johns.* 220.) The court will not, therefore, intend that they are prosecuted on behalf of the informer as well as of the United States, *especially as they do not so purport.* They are by the United States alone. (Record, pp. 1, 41.)

XI. The confiscation act of 1862, in the clause of section 7, providing that the proceedings "shall conform as nearly as

may be to proceedings in *admiralty* or *revenue* causes," is to be construed distributively, adapting them to those in admiralty causes, and on the admiralty side of the court, in cases of seizures made on navigable waters, and to those in revenue causes, on the common law side of the court, analogous to proceedings by information in the Exchequer in England for a forfeiture to the crown, where the seizure is upon land. The proceeding in this case was of the *latter* class. Those of the former description are properly carried on in the name of the United States alone. (*Act of March* 2, 1799, secs. 89, 91; 1 *U. S. Stat. at Large*, pp. 695, 697.) Subsequent statutes, in *pari materiâ*, have not changed this. Proceedings under the Internal Revenue laws on the other hand, which are of the *latter* description under the above classification, and therefore analogous to this case, are expressly given either in the name of the United States, or of the *Collector*, as by the *Act of August* 6, 1861, sec. 54, (12 *U. S. Stat.* 312,) and by that of 1862, (*ibid.* p. 144, sec. 31;) or of the *informer*, as by the *Act of* 1791, (1 *U. S. Stat.* p. 209, sec. 44;) or by *qui tam* action, as by the act of 1864, (13 *U. S. Stat.* p. 239, sec. 41.)

XII. The informer having been expressly named on the face of the information filed in this case, as the party entitled to one-half of the proceeds of the alleged forfeiture, (Record, p. 2, fol. 3; p. 4, fol. 5,) and one-half of the proceeds of the forfeiture having been expressly adjudged to the informer by name, by the sentence of condemnation pronounced in the District Court, and *he* not having joined in the present appeal or writ of error to this court from the reversal of that sentence by the Circuit Court, the present appeal and writ of error are to be treated as bringing up for review errors committed to the prejudice of the United States only, and not any which may have been committed to the prejudice of the informer. The learned Attorney-General, therefore, has no standing in court to object to the allowance of the pardon as against any supposed vested rights of the informer, even if any such existed.

One branch of the motion to dismiss, as originally pre-

sented at the term held in 1865, was based upon the non-joinder of the informer.

La Roche *vs.* Wosbrough, 2 *Term R.* 737.
Brown *vs.* Turner, 1 *Strange*, 233.
Cooper *vs.* Ginger, *Ibid.* 606.
Shirley *vs.* Lunenburg, 11 *Mass.* 379.
Bradshaw *vs.* Callaghan, 8 *Johns.* 558.
Jaqueth *vs.* Jackson, 17 *Wend.* 434.
Gay *vs.* Richardson, 18 *Pick.* 417.
2 *Tidd's Prac.* 1135, 1136, and cases.
Deneale *vs.* Stump's Ex'rs, 8 *Peters*, 526.

THIRD.—The sentence of condemnation having been reversed in the Circuit Court for errors contained in it, and particularly for want of jurisdiction in the court which pronounced it, the terms of the pardon do not require the payment of any costs of that proceeding, which failed, not through the pardon, but by its own illegality and errors; nor of the proceedings in the Circuit Court, which were rendered necessary to redress and correct them.

The notice of motion submits, however, to the court, the terms as to costs, on which effect is to be given to the pardon, by the dismissal of the cause.

FOURTH.—The application to the court for the allowance of the pardon, is properly presented to this court in which the cause was pending on error or appeal when it became available. Under the appeal (if that be the proper remedy) new allegations are expressly receivable, by the express terms of the acts giving the appeal in admiralty causes, to which the bringing of the present appeal claims that the proceedings are assimilated by section 7 of the act of 1862, already cited.

Act of March 3, 1803, (2 *U. S. Stat.* 244.)

If, however, the writ of error be the proper form of proceeding in this court for a review in the present case, and

the usual practice in error of an assignment of errors prevailed, the pardon would be pleadable to the assignment of errors, as a release of errors. It proves itself. It is record evidence under the great seal. Such evidence is always receivable in error, (although not contained in the record,) to prevent the reversal of a judgment. (Ritchie *vs.* Putnam, 13 *Wend.* 524.) The respondent is bound to present it at the earliest possible moment, and is entitled to be at once relieved from further prosecution. The following cases exhibit both the earlier and later English practice on this subject, and clearly show the jurisdiction of every court, upon error, to inquire into, and decide upon facts occurring subsequently to the judgment from which error is brought, *alleged by the defendant in error as a bar to the prosecution of the writ of error.*

Cro. Eliz. 814, Sir Henry Linley's Case.
Cro. Car. 47, Baldry *vs.* Packard.
Strange, 816, King *vs.* Hale.
7 *Peters*, 160, U. S. *vs.* Wilson, cases cited by the late Ch. J. Taney, then Attorney-General.
1 *Wm. Bl.* 479, King *vs.* Beaten.
2 *Car. & Kir.* 294, Rex *vs.* Harrod.
1 *Rol. Abr.* 197, Rex *vs.* Norris.
4 *Bl. Comm.* 400.

POINTS AS TO THE ALLEGED ERRORS.

FIFTH.—So much of the act of July 17th, 1862, commonly called the confiscation act, as provides for the forfeiture and confiscation of property, not on account of its having been itself used for treasonable or rebellious purposes, but on account of its owner having committed any of the offences therein specified, is unconstitutional and void, for the following reasons:

I. The Constitution itself defines the crime of treason against the United States as consisting in levying war against them, or adhering to their enemies, giving them aid and comfort. It forbids a conviction of the offence, unless on the testimony of two witnesses to the same overt act, or on con-

fession in open court. It empowers Congress to declare the punishment of treason, but provides that no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

Art. 3, sec. 3.

II. Every one of the offences specified in the above mentioned act is within the constitutional definition of treason. They are all translatable by the general phrases of levying war against the United States, or adhering to their enemies, giving them aid and comfort.

Ex parte Bollman & Swartwout, 4 *Cranch*, 75.
United States *vs.* Mitchell, 2 *Dall.* 348.
United States *vs.* Pryor, 3 *Wash. C. C. R.* 234.
2 *Burr's Trial*, 401 to 415.

III. The act imposes the forfeiture and confiscation, as a penalty, a punishment for these offences. Congress, under its general power to declare the punishment of treason, might limit it to this, waiving altogether the penalty of death or imprisonment. By the first section of the act of July 17, 1862, it did exercise this power to a certain extent, by making the punishment imprisonment, or fine and liberation of slaves, instead of death, in the discretion of the court. Punishment of the personal offences of the owner was the sole object of the act of 1862, as the forfeiture of property unlawfully used in aid of the rebellion, *on account of such use*, was that of the act of 1861. It is not argued here that confiscation might not constitutionally be imposed by Congress under the latter head, viz., that of the use of the property for prohibited purposes, as in the case of the forfeiture of vessels employed in the slave trade and the like, where it is irrespective of the ownership, or of the commission of any crime by the owner, and not as a punishment for *his* crime, although one committed by *him* may concur with the offence alleged against the property. It is the first head alone, and the provisions of the act of 1862, under which this prose-

cution is sustainable, if it be sustainable at all, with which we have to do. This was substantially conceded on the argument below, although the information is, in form, under both acts.

IV. This act of 1862 is not an exercise of the legislative power of the government to extend the liability of enemies' property to capture and condemnation *as prize of war, to that found on land* as well as at sea, both for the reasons given under Subdivision III., and because it expressly provides that the proceedings shall be like those in *admiralty* or *revenue* causes, and of course on the *instance* or *common law* side of the court, and not in the prize court. The proceedings in this case were not in the District Court as a Court of Prize, and bore no analogy to prize proceedings. It was, in fact, as already said, an information for forfeiture on the common law side of the court.

See Brown *vs.* The United States, 8 *Cranch*, 110.

V. We submit that Congress had no constitutional power to confiscate the private property of citizens on land under the war-power, in such manner as would violate any of the restraints of the Constitution, if it were done not as a belligerent, but as an ordinary legislative act; and that such would be the result here, in the case supposed, must be conceded.

1. We agree with the counsel for the Government that in the prize cases reported in 2*d Black*, the Supreme Court, with the concurrence of both the majority and minority, held that Congress might authorize the carrying on of war against the revolting States, and that they had done so; and that under that power, the property of southern citizens found at sea, might be seized and confiscated as lawful prize.

2. In point of fact, the property, the seizure of which was justified in these cases, was all property pro-

ceeding to or from the revolting States, and which, in our judgment, was all that the court committed itself to, as being lawful prize. For the sake of the argument, however, we may concede that Congress has authorized the seizure of the property of southern citizens generally *at sea*, without reference to its origin, port of departure or destination, to the full extent of the belligerent right under the law of nations.

3. But we maintain that it could not constitutionally go beyond that, and confiscate the property of citizens as prize of war, in cases where it would not be lawful prize under the general law of nations, provided that in so doing it contravenes an express prohibition of the Constitution, *which, we maintain, is equally restrictive in the exercise of belligerent powers, as in those of ordinary legislation.*

4. The confiscation, as enemies' property, of the private property of subjects of one belligerent found in the territories of the other at the breaking out of a war, is not authorized by the general law of nations. It is, therefore, within the restraints of the other provisions of the Constitution referred to.

Brown *vs.* The United States, 8 *Cranch*, 110.

VI. The instances put by the counsel for the informer on the argument in the Circuit Court, of seizures for smuggling or defrauding the revenue, (such as the forfeiture of imported goods on account of a fraudulent entry, though the goods were not present when the entry was made; of the forfeiture of a vessel for smuggling, because a passenger, unknown to the owners, fraudulently carries dutiable goods ashore; and of the forfeiture of all the goods in an invoice, because of the fraudulent undervaluation of a portion of them,) in answer to the argument that Congress can only

constitutionally authorize proceedings *in rem*, for the forfeiture of property, where the crime is not infamous, or where the forfeiture is for an offence committed by the *property*, irrespective of any committed by the owner, as in the case of the *deodand* of the common law, which we maintain is the source and origin of such forfeitures, are no answer to that argument, for the following reasons:

1. The instances put are not those of "*capital or otherwise infamous*" crimes, for which alone the Constitution requires indictment, trial by jury, and the like.

2. In each of those very instances, the property itself is a guilty instrument of crime, viz.: the vessel from which the smuggled goods are landed; the goods which are the *corpus delicti* of the fraud attempted on the revenue; and the remainder of the invoice, tainted by the fraud perpetrated with a portion of the goods of which it consists.

   They are as much so as the statue cast into the sea, under the laws of Draco, which, by an accident, had fallen on and killed a citizen.

VII. The act, therefore, in substance and effect, authorizes a conviction and punishment for treason, on a mere seizure of the property of the alleged offender, and without requiring the testimony of two witnesses to the same overt act, or a confession in open court, of which, moreover, the record shows there was neither in this case. Its very title is "An "act to *suppress insurrection*, to *punish treason* and *rebel*-"*lion*, to seize and confiscate the property of [not enemies "but] REBELS."

VIII. This is in direct violation of article 3 of section 3 of the Constitution, already quoted.

2 *Burr's Trial*, 425, per Marshall, Ch. J.

IX. Moreover, this being strictly a criminal prosecution for an infamous crime, by articles 5 and 6 of the amendments to the Constitution, the accused could not "be held "to answer, unless on a presentment or indictment of a "grand jury," and had an absolute right to "a speedy and "public trial *by an impartial jury of the State and district "wherein the crime may have been committed;* to be in- "formed of the nature and cause of the accusation; to be "confronted with the witnesses against him; to have com- "pulsory process for obtaining witnesses in his favor; and "to have the assistance of counsel for his defence." Unless all these requirements have been complied with, he has been "deprived of * * * property, without due process of "law."

X. Almost every one of these guarantees of the Constitution was violated in the District Court in this case. The accused, under color of the authority of this act of 1862, was in fact put on his trial in New-York without arrest, indictment by a grand jury, or being within the jurisdiction of the court, for offences alleged to have been committed in South Carolina, Georgia or Alabama; was confronted with no witnesses, having been denied the very privilege of appearing and defending himself, and was deprived of the assistance of counsel for his defence.

XI. It will not do to answer that only a part of the penalty for the alleged offence can be inflicted in this proceeding. To be stripped of his whole fortune may be a more serious punishment than such imprisonment as the court would think it right to award on a proper trial. Besides, if this part of the penalty can be exacted in a proceeding thus violating the Constitution, some device will soon be found for avoiding it as to the death-punishment, or imprisonment.

The act of July 17, 1862, in its third section, also further disqualifies the offender to hold any office under the United States.

XII. The act is also void, because the forfeiture is not limited to the life of the offender.

The explanatory resolution of July 17, 1862, (12 *U. S. Statutes at Large, p.* 627,) does not help this difficulty, as it relates only to real estate. On the contrary, Congress, by the passage of that resolution, exhibited its consciousness that proceedings under the act would be equivalent to an attainder of treason, and, therefore, within the prohibition of the Constitution, and its intention that they should have that effect.

The criticism might, perhaps, be made, that at common law the *conviction* worked a forfeiture of *personal property*, while nothing short of the *judgment* or attainder forfeited real estate; and that the Constitution, therefore, as its prohibition is confined to the effect of an "attainder of treason," is not violated by the absolute forfeiture of personal property without reference to the duration of the life of the offender. It is not believed, however, that any such narrow construction will be allowed to prevail. The Constitution, by the use of the general term "forfeiture," without restriction to land or personal property, exhibited clearly that all such forfeitures were intended to be interdicted as against posterity; and besides, if such forfeiture does take place in this case, *it is by the express sentence of the judgment or attainder.*

Since the foregoing propositions were originally penned, they have been found to be fully confirmed by the unanimous judgment of the Court of Appeals of Kentucky, in the case of Norris *vs.* Doniphan, 4 *Metcalf's Kentucky Rep.* 385.

The opinion of the court in that case also gives the appropriate answers to most of the arguments which can be urged in defence of the provisions of the act in question here objected to as unconstitutional.

SIXTH.—If we assume the constitutionality of the pro-

visions of the acts in question, already objected to, then, under their express provisions, the United States District Court for the Southern District of New-York had no jurisdiction in this case, but the proceedings could only be taken in the District of Illinois.

I. The act of 1861, which relates exclusively to property used for rebellious or insurrectionary purposes, in its second section, provides, that the property shall be condemned "in "the District or Circuit Court of the United States having "jurisdiction of the amount, or in Admiralty, *in any dis-* "*trict in which the same may be seized, or into which they* "*may be taken and proceedings first instituted;*" and in its third section authorizes "*the Attorney-General, or any Dis-* "*trict Attorney of the United States in which said property* "*may at the time be,*" to institute the proceedings.

Statutes at Large, Vol. 12, p. 319.

II. The act of 1862 (under which alone the condemnation in this case is sustainable, if at all) provides, in section 7th, that "proceedings *in rem* shall be instituted in the name of "the United States in any District Court thereof, or in any "territorial court, or in the United States District Court for "the District of Columbia, *within which the property above* "*described, or any part thereof, may be found, or into* "*which the same, if movable, may first be brought.*"

Stat. at Large, Vol. 12, p. 591.

III. The property in this case, consisting of stock in an *Illinois* corporation, represented by certificates held by a person in a Southern State, could neither be *found*, *seized* nor *brought* within the Southern District of New-York, nor could it be said to *exist* within that district for any of the purposes of the act. Whether under regulations of the company made for the convenience of its stockholders, it could or could not be transferred in books kept in the City of New-York, makes not the slightest difference. The *stock* is the

property sought to be confiscated, not the *certificate* or the *transfer;* and that is a mere undivided, fractional interest in the rail-road and other property of the corporation in Illinois.

Story's Conflict of Laws, secs. 362, 399.
Bates *vs.* New-Orleans, Jackson and Gt. Nor. R. R. Co., 4 *Abbott's* (*N. Y.*) *R.* 72; 13 *Howard's* (*N. Y.*) *Rep.* 516.
Coddington *vs.* Gilbert, 17 *N. York*, (3 *Smith*,) 489.

IV. It is not one of that class of cases where a court of equity, by virtue of its jurisdiction over the person of a defendant, can compel him to execute a conveyance of property not within its jurisdiction. The jurisdiction, if any, in this case, is solely and exclusively a jurisdiction *in rem*, and not *in personam*. The *res* must be within the jurisdiction, or the court cannot act.

The attempt to get over the difficulty by compelling the officers of the corporation to cancel the old and issue new certificates, is utterly unwarranted by any thing contained in the statutes, and requires from them acts beyond the scope of the powers conferred on them as officers of the corporation, which are limited to permitting a transfer and issuing a new certificate upon the surrender of an old one. Yet the corporation, whose officers were thus sought to be compelled to violate their duty, was held not entitled to be heard in the court below, and its answer stricken out, on the ground that it could not bring itself within the conditions authorizing an appearance in a suit *in rem*.

Record, p. 28, fol. 44; p. 17, fol. 26; pp. 14, 15, fols. 22, 23.
Story's Conflict of Laws, secs. 539, 543, 544, 545, 546, and cases cited in notes.

V. It was said on the argument in the Circuit Court, and

may be repeated here, that the District Court acquired jurisdiction, because—

1. Although the Great Western Rail-Road Co.'s claim and answer was stricken out, it had appeared by filing an unconditional stipulation for costs, and that the court acquired jurisdiction over the corporation.

To this we respectfully answer:

(1*st.*) The stipulation for costs is no appearance. The very claim and answer stricken out is the only appearance known to the practice.

(2*nd.*) But if it had appeared, it is not the jurisdiction *in personam* over the corporation, of the absence of which we complain, but the jurisdiction over the *res*—the subject matter—which, we claim, failed.

2. It was said that the corporation had, on the return of the process, obtained time to appear and answer. The replies to this are the same. Besides, it is the very appearance which the prosecution succeeded in striking out which is now claimed to have conferred jurisdiction.

3. It was said that all that was necessary to confer jurisdiction was, that a notice should be given to some one within the district, which would make it the duty of the corporation to hold the stock subject to the right of the United States, and that this was accomplished by the service of the process on the transfer agent in the City of New-York.

The reply to this is obvious. It is the same already made. The act peremptorily requires the

res itself to be within the jurisdiction, and is not satisfied by some one being present to be affected with notice.

In this case, the Company being an Illinois corporation, its stock exists legally in Illinois, and no where else, even though all the real estate and personal property which it owned might be in the State of New-York.

Ohio and Mississippi R. R. Co. *vs.* Wheeler, 1 *Black*, 286.

The return made by the marshal, that he had attached the stock, was, therefore, a legal impossibility, and void for repugnancy.

SEVENTH.—The order striking out the answer of the plaintiff in error in the District Court, on the ground of his supposed incapacity as an alien enemy to be a party litigant, was erroneous, and the judgment resulting from that error, and his consequent compulsory default, was properly reversed for that reason by the Circuit Court.

I. The doctrine of alien enemy, in its general sense, is inapplicable to the late civil war and to this case. Le Roy M. Wiley was and is a citizen of the United States. He, therefore, cannot be an *alien* enemy. His residence in Alabama, under the decision of this Court in the prize cases, impressed with a hostile character his property, the growth or produce of that or any other southern State, on its way to another market, and his property proceeding to or from those States. Assume, for the sake of the argument, that it did all his property afloat, wherever shipped and wheresoever bound! The property in question here, however, is stock in an Illinois corporation, which is impressed with no hostile character by his residence, and which

is not declared confiscable by any act of Congress, until it is proved that he has levied war against, or adhered to the enemies of the United States, giving them aid and comfort; and which he might even maintain a suit as plaintiff, in the courts of the United States, to recover, unless prevented from doing that by proof made in pursuance of section 6 of the act of July 17, 1862.

Brown *vs.* The United States, 8 *Cranch*, 10.
2 *Blackstone*, 401.
Ex parte Boussmaker, 13 *Vesey, Jr.* 71.
Douglas, 625.
Fairfax's Devisee *vs.* Hunter's Lessee, 7 *Cranch*, 603.
Co. Litt. 129 *b.*
1 *Kent's Comm.* 65, 69, 70, 71. II. 55.
The Phœnix, 5 *Rob.* 21.
The Vrouw Anna Catharina, 5 *Rob.* 161.
30 Hogsheads Sugar, Bentzon, Claimant, *vs.* Boyle, 9 *Cranch*, 191.
The Charming Betsey, 2 *Cranch*, 64.
The Venus, 8 *Cranch*, 253.
The Hiawatha, &c., 2 *Black*, 638.

II. In this case, however, he appeared as a defendant in the District Court to defend what was in substance a charge of treason against him; which, if established, was to be punished by the confiscation of the property seized. Not even the strictest rule of disability as an alien enemy ever applied could prevent such an appearance and defence in any court in Christendom. The claim of an enemy is said to be rejected in the prize courts—but it is heard and considered—not stricken out. The counsel for the prosecution were, in fact, challenged on the argument below, to produce a case, where the respondent's answer had ever been stricken out, either in a prize or instance court, or his plea in a court of law, in a proceeding *in rem*, on the ground of his being an alien enemy, without allowing him a hearing. They entirely

failed to do so; whereupon the counsel for the present respondent produced the following cases, where the hostile character of the claimants appeared on the claim filed—where it was nevertheless heard and decided on its merits—and in the first three of which the appellant was allowed to appeal to, and was heard in an appellate court.

The Bella Guidita, 1 *C. Rob. R.* 174, Amer. Ed.
The Gerasimo, 11 *Moore P. C. Rep.* 88.
The Baltica, *Ibid.* 141.
The Indian Chief, 3 *Rob.* 17.
The President, 5 *Rob.* 248.
The Fama, 5 *Rob.* 97.

The claim, answer or plea, often presents (as was the case here) a nice question of law as to the *status* of the respondent, on the facts, which he is entitled to have heard and decided in regular course, with a right of review, and not disposed of summarily, on motion.

If a defendant can be criminally prosecuted as this appellant was, in a matter involving either his life, liberty or property, he cannot be deprived of his right to defend himself.

III. Under the rule contended for on the other side, the care exercised by Congress to make, in addition to residence in a southern State, active participation in the late civil war necessary to entail a forfeiture of property, becomes but a mockery and a delusion; for, if a southern residence precludes a defence when the property is seized as forfeited, on the pretence of disability in the owner as an alien enemy, the forfeiture inevitably follows for want of a defence. The ceremony of requiring proof in the court below was an idle one, not warranted or countenanced by any practice, if the compulsory default was regular; and the *ex parte* testimony taken need be but very cursorily read, to realize what an utter violation of all rules of evidence, excluding hearsay and other illegal testimony, was committed in the absence of any one to object.

IV. The attempt to make that doctrine applicable, by regarding the party whose property is seized for confiscation on account of alleged traitorous and rebellious acts in which the property was in no wise instrumental, *who is named in the information for forfeiture as the owner, and who must be proved to be such to entitle the government to the sentence of condemnation demanded*, as himself an original actor, a *promotor litium* by the act of appearing to defend himself, is equally sophistical and unwarranted.

V. It was said, however, below, that the writ of error brings up properly nothing more than the information, the process and return, the default and the judgment; that, therefore, the court, on error, cannot review the order striking out the answer of the plaintiff in error, and that the judgment being by default, in fact, nothing is open to review.

This is not so, for the following reasons:

1. If the writ of error brought up no more than is admitted on the other side, the questions of the constitutionality of the law under which the proceedings took place, and of the jurisdiction of the court below, would still be open, as well as that whether the judgment rendered was authorized by the act.

   Macker's Heirs *vs.* Thomas, 7 *Wheaton*, 530.
   Slacum *vs.* Pomeroy, 6 *Cranch*, 221.
   Cro. Jac., 547; 2 *Saunders*, 43; 1 *Wm. Blackstone*, 950.

   These questions the court would review, without their being raised below, and for the purpose of keeping that court within the sphere of its jurisdiction. They were questions which the court below was bound to pass upon, even in the absence of an appearance. As no consent can confer jurisdiction, so no default can waive them.

2. When the error sought to be corrected is in one of the outbranches of the record; that is, in an order or proceeding of the court not usually inserted in the judgment-roll, the practice is "to allege diminution;" that is, to assign the error specially, which is intended to be reached, upon which the appellate court awards a *certiorari* to bring up the order or proceeding not contained in the return.

Graddell *vs.* Tyson, 2 *Ld. Raymond*, 1,441.
Colden *vs.* Knickerbacker, 2 *Cowen*, 31 and 36, note.
Rew *vs.* Barker, *ibid.* 408.
Rowan *vs.* Lytle, 4 *Cowen*, 91.
Brisbin *vs.* McLaughlin, *ibid.* 533.
Graham's Practice, 956, 957.
Pelletreau *vs.* Jackson, 7 *Wend.* 478.

3. That practice was substantially pursued in this case. The error committed in striking out the answer is specially assigned in the assignment of errors; (Record, p. 38, fol. 62;) but, as in the United States Court, in theory, the assignment of errors is filed in the court below, before the return of the writ of error—and, as the return made by the District to the Circuit Court included the order striking out the answer, and the papers on which it was founded—there was no need of a *certiorari* to bring them up.

Judiciary Act, sec. 22; 1 *U. S. Stat. at Large*, 84.

4. The suggestion made below, that the papers returned might not be all on which the court proceeded in making that order, is entitled to no weight; as, if the return was not full, the counsel for the defendant in error could have brought the fact to the notice of the court and have had it corrected. It was conceded by them, however, that, in point of fact, every thing had been returned.

VI. There is no force in the suggestion made in the court below, that the error, in striking out the answer of the plaintiff in error, must be reviewed and corrected, if at all, on *mandamus*, and not on writ of error. It was a judicial, not a ministerial act, and not attainable by *mandamus*.

Decatur *vs.* Paulding, 14 *Peters*, 497.

VII. It was also said below, however, that if the order striking out the answer of the plaintiff below ought not to have been granted, on the ground on which it was put, it should be affirmed, because the court below could have granted it on other grounds, particularly that of want of authority of the attorneys for the respondent below to appear for him.

1. This is not so. If several causes are assigned for a nonsuit, and the court grants it on one, and says nothing of the others, if error is committed, the judgment must be reversed. *Non constat*, that if the other grounds had been sustained, the defect might not have been supplied.

2. So here, *non constat*, but that if the court below had expressed an opinion unfavorable to the sufficiency of proof of authority of the attorneys to appear, further and sufficient proof might have been supplied.

3. This court has no original jurisdiction, nor had the Circuit Court, to strike out the answer, on a ground not sustained below. The argument used on the other side, in effect, calls on the court to exercise such a jurisdiction.

4. Even if the order of the court below could be regarded as proceeding on that ground, (of want of authority on the part of the attorneys to appear for the respondent,) it was not a mere practice order,

but reviewable in the Circuit Court and in this court. Its effect was to deprive the plaintiff in error of the right of trial by jury, guaranteed to him by the Constitution.

Parsons *vs.* Bedford, 3 *Peters*, 477, 8 and 9.

5. Even in strictly civil actions, the court never inquires into the authority of an attorney to appear for a defendant, at the instance of a plaintiff. On the contrary, the defendant is bound by the appearance, even if unauthorized, unless the attorney is shown to be insolvent, or to have acted in collusion with the plaintiff.

Field *vs.* Gibbs, 1 *Peters' C. C. R.* 155.
Osborn *vs.* U. S. Bank, 9 *Wheat.* 261–2.
1 *Wash. C. C. R.*, 10; 1 *Salk.* 865.
6 *Johns.* 34 and 296; 1 *Binney*, 214; 9 *Wend.* 499.
1 *Dowl. Pr. Cases*, 632; 3 *B. & Adol.* 785; *Graham's Practice*, 43, 44, 45.

6. The affidavit of the defendant's attorney in this case showed sufficient authority, by the nature of the relations existing between him and his client, which, he affirmed, in his judgment gave him authority to appear.

Aff't, p. 11.

7. This, in fact, however, was a criminal proceeding, where, so far from striking out an appearance, the court usually assign counsel, if the defendant has none.

VIII. The practice pursued in putting in the answer was strictly justified by the following rules. The defendant being averred to be the owner of the property in the information, it was not necessary for him again to aver that; but the analogy between this and other proceedings *in rem*,

which the statute directs to be preserved "as far as applicable," here failed; besides, he was excused from answering as to the ownership, as he was to every thing else, by the rule of which he availed himself, and the salutary nature of which was manifested in this case, where, avowing himself a loyal citizen of the United States would expose him to punishment and penalties in the South, even if he escaped those sought to be inflicted here. If, however, there was any technical defect in the answer or its verification, it was clearly amendable.

Supreme Court Rules in Admiralty, XXIV., XXVI., XXVII., XXXI., XLVI.

District Court Rule, 93, as to verification of an answer of a party absent, and Rules 188 and 189, as to pleas to Informations.

EIGHTH.—The plaintiff in error was thus illegally and unjustly deprived of the right of trial by jury in the court below, guaranteed to him by Article VII. of the amendments to the Constitution of the United States, this being a suit at common law according to the decisions of this court.

8 *Wheaton*, 391, The Sarah.
9 *Wheaton*, 421, The Margaret.
1 *Peters*, 547, U. S. *vs.* 422 Casks of Wine.

NINTH.—For the foregoing reasons, this court should not inquire or examine whether errors were committed, or not, in the judgment of the Circuit Court, reversing that of the District Court; but should allow the pardon, and dismiss the writ of error and appeal of the United States; but, if it does proceed to an examination of the record and of the alleged errors, then the judgment of the Circuit Court of the United States in the Second Circuit, reversing that of the District Court for the Southern District of New-York, was correct, and should be in all things affirmed.

JERE. LAROCQUE,
of Counsel.

Appendix A.

SUPREME COURT OF THE UNITED STATES,

DECEMBER TERM, 1865.

THE UNITED STATES, Plaintiffs in Error,
vs.
LE ROY M. WILEY.
No. 279.

Ordered by the court, that the consideration of the questions arising in this cause upon the motion to dismiss the writ of error on the ground that a pardon has been granted to the defendant by the President of the United States, be and the same is hereby postponed until after the argument upon the merits.

Jan'y 8th, 1866.

THE UNITED STATES, Plaintiffs in Error,
vs.
LE ROY M. WILEY.
No. 279.

The Chief Justice announced, in answer to the suggestion addressed to the court by Mr. Larocque, of counsel for the defendant in error, on Friday last, the 9th instant, that the order made in this cause on the 8th of January last was intended to dispose of the motion to dismiss for the want of jurisdiction, as well as of the motion to dismiss on the ground of pardon since the appeal was taken. Both grounds of dismissal are postponed for consideration with the merits. The motion to put the Attorney-General to his election, between the prosecution of the appeal and the prosecution of an alleged proceeding against the same property, and for the same cause, in Illinois, is denied, for the want of jurisdiction of the question.

Feb'y 13th, 1866.